

**COLORADO  
COURT RULES**

**BOOK 3**

**2013**



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# **COLORADO COURT RULES**

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**2013 EDITION**

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**Volume 3**

**Federal Rules**

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**Prepared by the Editorial Staff  
of the Publisher**



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## PREFACE

This volume has been prepared by the staff of the Publisher. The volume contains federal court rules - district, circuit, and national in scope - of particular interest to the Colorado practitioner. For a complete listing of the included rules, please see the Table of Contents immediately following this Preface.

The volume contains all effective rules received by the publisher for the included courts as of January 20, 2013. Subsequent rule changes will appear in future supplements to this volume or in revised editions.

This volume can be purchased bundled with Volumes 1 and 2, which contain rules for the state courts of Colorado, or as a separate, stand alone product.

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**LOCAL RULES OF PRACTICE  
UNITED STATES DISTRICT  
COURT  
FOR THE  
DISTRICT OF COLORADO**

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Effective April 15, 2002

with updates through

December 1, 2012

LOCAL RULES OF PRACTICE  
UNITED STATES DISTRICT  
COURT  
FOR THE  
DISTRICT OF COLUMBIA

ADOPTED BY THE  
JUDICIAL CONFERENCE  
OF THE DISTRICT OF COLUMBIA  
JANUARY 19, 1962



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# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

## SECTION I. CIVIL RULES

### I. SCOPE, PURPOSE, AND CONSTRUCTION

#### D.C.COLO.LCivR 1.1. SCOPE OF THE LOCAL RULES

**A. Title and Citation.** These rules shall be known as the Local Rules of Practice of the United States District Court for the District of Colorado-Civil. These rules shall be cited as D.C.COLO.LCivR Rule, Section, Subsection, and Paragraph (e.g., D.C.COLO.LCivR 72.1A.1.a.).

**B. Effective Date.** These rules became effective on December 1, 2012.

**C. Scope.** These rules apply in all civil actions filed in the United States District Court for the District of Colorado except as specifically addressed in Section III - AP Rules. Section III - AP Rules apply to any social security appeal, a case commenced or reviewed under 5 U.S.C. § 706 concerning an action or final decision of an administrative agency, board, commission or officer, or a bankruptcy appeal ("AP Case").

**D. Relationship to Prior Rules.** Except as otherwise provided in D.C.COLO.LCivR 83.4, concerning standards of professional responsibility governing conduct of attorneys, these rules supersede all previous local rules.

**E. Numbering and Indexing.** These rules are numbered and indexed in accordance with the Judicial Conference Uniform Numbering System.

**F. Judicial Officer.** A judicial officer refers to a district judge or to a magistrate judge.

**G. Clerk.** Reference in these rules to the clerk refers to the Clerk of the Court or a deputy clerk, unless otherwise specified.

**H. Forms.** Forms are subject to modification without notice.

**I. Pilot Projects.** Upon appropriate notice, without amendment of the local rules of practice, the court may adopt and implement pilot programs or special projects by general order. The general order shall address:

1. the purpose of the pilot program or special project;
2. the term of the pilot program or special project;
3. the effect upon any local rule of practice; and
4. any requirement necessary to implement or facilitate the pilot program or special project.

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

#### D.C.COLO.LCivR 1.2. FORMS

Any court approved form is found on the court's website - [www.cod.uscourts.gov](http://www.cod.uscourts.gov). A form may be modified by the court or a judicial officer at any time. A form modified by a judicial officer may be found under the judicial officer's procedures on the court's website.

(Amended, effective December 1, 2012.)

## II. COMMENCEMENT OF ACTION, SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS

### D.C.COLO.LCivR 3.1. CIVIL COVER SHEET

**A. Civil Cover Sheet.** A properly completed Civil Cover Sheet found at <http://www.cod.uscourts.gov/Forms.aspx> shall be filed at the commencement of each civil action. If the filing party is represented by counsel, the Civil Cover Sheet shall be completed and signed by an attorney of record in the case. In actions governed by Section III-AP Rules, the filing party shall add the phrase “AP docket” to the Brief Description field in Section VI of the Civil Cover Sheet. Disputes as to the AP docket designation shall be addressed by motion filed before an answer or other response is due.

**B. Supplemental Civil Cover Sheet for Notices of Removal.** A properly completed Supplemental Civil Cover Sheet for Notices of Removal found at <http://www.cod.uscourts.gov/Forms.aspx> shall be given to the clerk at the time a notice of removal is filed.

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

### D.C.COLO.LCivR 3.2. NOTICE REGARDING JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

A party shall promptly file a notice of pendency of action or proceeding if a civil action filed in this court is the subject of, or related to, an action or proceeding pending before the Judicial Panel on Multidistrict Litigation.

### D.C.COLO.LCivR 3.3. PAYMENT OF FEES

**A. Filing Fee.** The clerk shall require payment of a filing fee before a civil action, suit, or proceeding is filed. When a pleading is received for filing without the required fee, the clerk shall notify the filing party that the pleadings will be held and not accepted for filing until the required fee is received or an order allowing the party to proceed in forma pauperis is entered. When the filing fee or order is received, the clerk shall file the pleading.

**B. Fees.** See Schedule of Fees found at <http://www.cod.uscourts.gov/Forms.aspx>.  
(Amended, effective December 1, 2012.)

### D.C.COLO.LCivR 5.1. FILING AND SERVICE OF PLEADINGS AND PAPERS

**A. Service Contemporaneous with Filing.** If a paper is filed, but service is not made by electronic means, service shall be made under Fed. R. Civ. P. 5(b) on the same date as the date of filing.

**B. Facsimile Filing.** A pleading or paper which does not require a filing fee and is no longer than ten pages, including all attachments, may be filed with the clerk by means of facsimile at a telephone number that may be obtained from the court’s web site or clerk’s office. On receipt of a facsimile filing, the clerk will make the copies required under D.C.COLO.LCivR 10.1L. Facsimiles received by the clerk after 5:00 p.m. (Mountain Time) will be considered filed as of the next business day. Unless otherwise ordered by the court, a pleading or paper filed by facsimile shall be treated as an original for all court purposes.

**C. Facsimile Cover Sheet.** A pleading or paper filed with the clerk by facsimile must be accompanied by a facsimile cover sheet found at <http://www.cod.uscourts.gov/Forms.aspx> which includes the following:

1. the date of transmission;
2. the name, facsimile number, and telephone number of the attorney or pro se party making the transmission;

3. the case number, caption, and title of the pleading or paper; and
4. the number of pages of the pleading or paper being transmitted including the facsimile cover sheet.

**D. Confirmation of Facsimile Filing.** Confirmation that the clerk received a facsimile filing may be made by:

1. reviewing the docket entries, or
2. transmitting an additional copy of the first page of the pleading or paper, and requesting on the facsimile cover sheet that the first page of the pleading or paper be file stamped by the clerk and returned to the attorney or pro se party via facsimile.

**E. Original Pleading or Paper.** If a facsimile copy is filed in lieu of the original pleading or paper, the attorney or pro se party shall maintain the original document including the certificate of service. See D.C.COLO.LCivR 5.1F. At the direction of a judicial officer, the transmitting party may be required to file the original document accompanied by a letter noting that the original document is being filed after transmission by facsimile.

**F. Signatures.** Signatures on pleadings or papers filed by facsimile shall have the same legal effect as original signatures on pleadings actually filed with the court.

**G. Certificate of Service.** Each paper, other than one filed ex parte, shall be accompanied by a certificate of service indicating the date it was served, the name and address of the person to whom it was sent, and the manner of service. Where service is by electronic means, the electronic mail address or facsimile number used shall be listed.

(Amended, effective December 1, 2012.)

#### **D.C.COLO.LCivR 5.2.**

#### **SERVICE BY OTHER MEANS, INCLUDING ELECTRONIC MEANS**

**A. Electronic Case Filing Registration.** Registration with the court's Electronic Case Filing system shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Civil Procedure.

**B. Form and Content of Consent.** A party's consent to accept service by other means, as authorized by Fed. R. Civ. P. 5(b), shall be expressly stated and filed in writing with the clerk. The consent shall include:

1. the persons to whom service should be made; and
2. the appropriate address or location for such service, as authorized by Fed. R. Civ. P. 5(b).

**C. Duration of Consent.** A party's consent shall remain effective for all service authorized by Fed. R. Civ. P. 5 or Fed. R. Civ. P. 77(d) until expressly revoked or until the representation of a party changes through entry, withdrawal, or substitution of counsel.

**D. Notice of Change of Electronic-Mail Address or Facsimile Number.** Within five days after any change of electronic-mail address or facsimile number of any attorney or pro se party who has consented to service by other means, including electronic means, notice of the new electronic-mail address or facsimile number shall be filed.

**E. Effect of Electronic Service.** If a document is electronically filed and thereby electronically served, the time to respond or reply shall be calculated from the date of electronic service, regardless of whether other means of service are also used by the filing party.

#### **D.C.COLO.LCivR 5.5.**

#### **CUSTODIAN OF NON-FILED DISCOVERY MATERIALS**

Counsel or a pro se party noticing a deposition or responsible for serving other non-filed discovery materials shall act for the court as custodian of such material. Nonfiled discovery materials under Fed. R. Civ. P. 5(d) include notices to take depositions and discovery subpoenas. The original sealed deposition transcript shall be brought to trial and opened only upon court order.



**D.C.COLO.LCivR 5.6.**  
**ELECTRONIC CASE FILING**

**A. Electronic Filing.** Pursuant to Fed. R. Civ. P. 5(d), the court will permit materials to be filed, signed, and verified by electronic means. Parties filing by electronic means shall comply with standards and procedures set forth in a manual entitled "Electronic Case Filing Procedures for the District of Colorado (Civil Cases)." The current version of that manual shall be available in the clerk's office, and shall be posted on the court's web site.

**B. Paper Filings.** Parties authorized or directed to file in paper format, pursuant to exceptions enumerated in the Electronic Case Filing Procedures for the District of Colorado (Civil Cases), shall continue to file in accordance with all provisions of the local rules.

**C. Time.** Nothing in the Electronic Case Filing Procedures for the District of Colorado (Civil Cases) alters the rules governing the computation of the deadlines for filing and service of documents that are set forth in Fed. R. Civ. P. 6.

**D. Service.** Parties are authorized to make service under Fed. R. Civ. P. 5(b)(3) through the court's transmission facilities.

(Amended, effective December 1, 2011.)

**D.C.COLO.LCivR 6.1.**  
**STIPULATIONS AND MOTIONS FOR EXTENSION OF TIME; MOTIONS FOR CONTINUANCE**

**A. Extension on Stipulation.** The parties may stipulate in writing to one extension of not more than 21 days beyond the time limits prescribed in the Federal Rules of Civil Procedure to respond to a complaint, cross-claim, counterclaim, third-party complaint, interrogatories, requests for production of documents, or requests for admissions. The stipulation must be filed before the expiration of the time limits to respond prescribed in the Federal Rules of Civil Procedure, and shall be effective upon filing, unless otherwise ordered. Except as provided in Section A. of this rule, all requests for extensions of time must be approved by court order on motion.

**B. Judicial Enforcement of Extension on Stipulation.** Except as provided in section A. above, or approved by order of the court, no stipulation by the parties shall be binding on or enforced by the court, including stipulations concerning a date or deadline established by court order, hearing dates, and case management deadlines.

**C. Extension on Motion.** Except as provided in section A. of this rule, all requests for extensions of time must be approved by court order on motion.

**D. Content of Motion for Extension of Time.** Any motion for extension of time shall state the reason an extension is required, state a date certain for the requested extension of time, and state the total number of extensions previously granted, including those obtained under section A. of this rule.

**E. Service on Client.** A stipulation or motion for extension of time or continuance shall be served simultaneously on the moving attorney's client.

**F. Time Limitations.** Except as provided in section A. of this rule:

1. no agreement of the parties to shorten or extend any time limitation provided by the Federal Rules of Civil Procedure or these rules will be recognized or enforced, nor will such an agreement be considered just cause for failing to perform within the time limits established by those rules; and

2. only time variances specifically approved by court order will be recognized as having any binding or legal effect.

(Amended, effective December 1, 2012.)

**III. PLEADINGS AND MOTIONS**

**D.C.COLO.LCivR 7.1.**  
**MOTIONS**

**A. Duty to Confer.** The court will not consider any motion, other than a motion under Fed. R. Civ. P. 12 or 56, unless counsel for the moving party or a pro se party, before filing



the motion, has conferred or made reasonable, good-faith efforts to confer with opposing counsel or a pro se party to resolve the disputed matter. The moving party shall state in the motion, or in a certificate attached to the motion, the specific efforts to comply with this rule. This Section A. shall not apply to cases involving pro se prisoners.

**B. Unopposed Motion.** If a motion is unopposed, it shall be entitled “Unopposed Motion for \_\_\_\_\_.”

**C. Motion, Response and Reply; Time for Serving and Filing; Length.** Excluding motions filed under Fed. R. Civ. P. 56 or 65, a motion involving a contested issue of law shall state under which rule or statute it is filed and be supported by a recitation of legal authority incorporated into the motion. The responding party shall have 21 days after the date of service of a motion, or such lesser or greater time as the court may allow, in which to file a response. The moving party may file a reply within 14 days after the date of service of the response, or such lesser or greater time as the court may allow. The date of service of a motion which is electronically filed shall be determined in accordance with D.C.COLO.LCivR 5.2E. Nothing in this rule precludes a judicial officer from ruling on a motion at any time after it is filed.

A motion shall not be included in a response or reply to the original motion. A motion shall be made in a separate paper.

**D. Citations.** Every citation in a motion, response or reply shall include the specific page or statutory subsection to which reference is made. If an unpublished opinion is cited, a copy of the opinion shall be provided to any party appearing pro se.

**E. Supplemental Authority.** If the matter is set for hearing, any supplemental authority must be filed at least seven days before the hearing.

**F. Proposed Order.** A moving party may submit a proposed order with an unopposed motion or nondispositive motion. A general order attached to a motion (such as “it is ordered” or “so ordered”) is not permitted. A proposed order must be on separate paper, bear a separate caption, and set out clearly the order’s basis and terms.

**G. Hearings.** A motion may be decided on the papers unless oral argument, at the court’s discretion, is ordered.

**H. Sanctions.** Motions, responses, and replies shall be concise. A verbose, redundant, ungrammatical, or unintelligible motion, response, or reply may be stricken or returned for revision, and its filing may be grounds for imposing sanctions.

(Amended, effective December 1, 2011.)

## **D.C.COLO.LCivR 7.2.**

### **PUBLIC ACCESS TO DOCUMENTS AND PROCEEDINGS**

**A. Policy.** The public shall have access to all documents filed with the court and all court proceedings, unless restricted by court order or as provided in Section D of this rule.

**B. Motions to Restrict Access.** Any motion to restrict public access will be open to public inspection and must:

1. Identify the document or the proceeding for which restriction is sought;
2. Address the interest to be protected and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restricted access);
3. Identify a clearly defined and serious injury that would result if access is not restricted;
4. Explain why no alternative to restricted access is practicable or why only restricted access will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and
5. Identify the restriction level sought (i.e., Level 1 = access limited to the parties and the court; Level 2 = access limited to the filing party and the court; Level 3 = access limited to the court).

**C. Public Notice of Motions to Restrict Access; Objections.** Notice of the filing of such motion will be posted on the court’s website on the court business day following the filing of the motion. Any person may file an objection to the motion to restrict access within three court business days after posting. Absent exigent circumstances, no ruling on

a motion to restrict access will be made until the time for objection has passed. The absence of objection shall not, alone, result in the granting of the motion.

**D. Filing Restricted Documents.** Any document that is the subject of a motion to restrict access may be filed as a restricted document, and will be subject to restriction until the motion is determined by the court. If a document is filed as a restricted document without an accompanying motion to restrict access, it will retain a Level 1 restriction for fourteen days. If no motion to restrict access is filed within such time period, the access restriction will expire and the document will be open to public inspection.

(Amended, effective December 1, 2011.)

### **D.C.COLO.LCivR 7.3.**

**[Reserved]**

### **D.C.COLO.LCivR 7.4.**

#### **DISCLOSURE STATEMENT**

**A. Who Must File.** Any nongovernmental corporate party or other legal entity to a proceeding in a district court must file a disclosure statement identifying all its parent entities and listing any publicly held entity that owns ten percent or more of the party's stock.

**B. Time for Filing; Supplemental Filing.**

1. A party must file the disclosure statement upon its first appearance, pleading, petition, motion, response, or other request addressed to the court.

2. A party must promptly file a supplemental disclosure statement upon any change in the information that the statement requires.

### **D.C.COLO.LCivR 7.5.**

#### **NOTICE OF RELATED CASES**

**A. Who Must File.** A party to a case must file a notice identifying all cases pending in this or any other federal, state, or foreign jurisdiction that reasonably may be related to the case.

**B. Related Cases.** "Related" cases are cases that have at least one party in common and that have common questions of law and fact.

**C. Time for Filing; Supplemental Filing.**

1. A party shall file the required notice at the time of its first appearance or at the time of the filing of its first pleading, petition, motion, response, paper, or other matter addressed to the court.

2. A party shall file promptly a supplemental notice of any change in the information required under this rule.

**D. Notice to Judicial Officers.** The notice of a related case shall be provided by the clerk to all judicial officers to whom the related case or cases are assigned.

**E. Procedure on Receipt of Notice.** On receipt of notice of a related case, the judicial officers to whom the related cases are assigned shall confer to discuss whether the related cases should be submitted for special assignment or reassignment under D.C.COLO.LCivR 40.1A. or transfer under D.C.COLO.LCivR 40.1C.4.a.

### **D.C.COLO.LCivR 8.1.**

#### **PRO SE PLEADINGS**

**A. Forms and Instructions.** A pro se party shall use the forms established by this court to file an action. On request, the clerk shall provide copies of the necessary forms and instructions for filing an action.

**B. Fees.** A judicial officer shall grant or deny a motion to proceed without payment of fees.

**C. Review of Pro Se Pleadings.** A judicial officer designated by the Chief Judge shall review the pleadings of a pro se party who is allowed to proceed without prepayment of fees to determine whether the pleadings should be dismissed summarily. A judicial officer



may request additional facts or documentary evidence necessary to make this determination.

**D. Assignment.** If an action is not dismissed summarily, the action shall be assigned to a district judge and to a magistrate judge in accordance with D.C.COLO.LCivR 40.1. A judicial officer to whom the action is assigned may order issuance of a summons.

## **D.C.COLO.LCivR 8.2. PRISONER PLEADINGS**

**A. Forms and Instructions.** A pro se prisoner shall use the forms established by this court to file an action. On request, the clerk shall provide copies of the necessary forms and instructions for filing an action.

**B. Fees.** A judicial officer shall grant or deny a motion to proceed without prepayment of fees.

**C. Review of Prisoner Pleadings.** A judicial officer designated by the Chief Judge shall review the pleadings of a prisoner (regardless of representation by counsel) to determine whether the pleadings should be dismissed summarily if the prisoner is:

1. allowed to proceed without prepayment of fees;
2. challenging prison conditions;
3. seeking redress from a governmental entity, officer, or employee; or
4. asserting claims pertinent to his or her conviction or sentence, except in death penalty cases.

A judicial officer may request additional facts or documentary evidence necessary to make this determination.

**D. Assignment.** If an action is not dismissed summarily, the action shall be assigned to a district judge and to a magistrate judge in accordance with D.C.COLO.LCivR 40.1. A judicial officer to whom the action is assigned may order issuance of a summons, an order to answer, or an order to show cause.

## **D.C.COLO.LCivR 10.1. FORMAT OF PAPERS PRESENTED FOR FILING**

**A. Definition.** The term “papers” includes pleadings, motions, briefs, or other filings made pursuant to the Federal Rules of Civil Procedure or these rules.

**B. Size.** All documents filed with the court shall be on 8 1/2- by 11-inch, white paper. Use of recycled paper is acceptable.

**C. Margins.** Margins shall be 1 1/2 inches at the top and 1 inch at the left, right, and bottom.

**D. Font.** Except in pro se cases or for good cause shown, all papers shall be typewritten using black ink and not less than 12-point font.

**E. Spacing.** All papers shall be double-spaced.

**F. Text.** Text shall be printed on one side of the page only.

**G. Legible.** All papers and signatures shall be legible.

**H. Exhibits.** Exhibits, other than documentary evidence in a different format, shall conform to this rule.

**I. First Page; Case Number.** The title of every paper shall reflect accurately its nature and the identity of the party on whose behalf it is filed. All papers filed in pending cases after commencement of the case shall bear the proper case number, the case year, the type of case, the chronological case number, the initials of the assigned district judge, and the initials of the assigned magistrate judge:

When the case is commenced, the clerk will select and designate the type of case, the assigned district judge and the assigned magistrate judge. The parties will thereafter use that designation as the case number. For the initials of the judicial officers, see the list of Judicial Officers Initials found at <http://www.cod.uscourts.gov/Forms.aspx>.

(1) A civil case shall be designated “cv” (for example 05-cv-01234-WYD-MJW);

(2) Miscellaneous filing of papers shall be designated “mc” (for example 05-mc-00123); and

(3) Registration of judgment pursuant to 28 U.S.C. § 1963 shall be designated “rj” (for example 05-rj-00123).

**J. Caption.** The caption format shall be as set forth in (<http://www.cod.uscourts.gov/Forms.aspx>). Parties shall be listed in a caption with one party per line. The proper name of a party shall be in capital letters, and any identifying text shall be in upper and lower case immediately following the proper name. For example:

XOXOXO, and

XOXOXO,

Plaintiffs,

v.

XOXOXO,

XOXOXO, individually, and in his official capacity as \_\_\_\_\_,

XOXOXO, d/b/a XOXOXO,

XOXOXO, a/k/a XOXOXO,

XOXOXO, INC., a Colorado corporation, and

XOXOXO whose true name is unknown.

Defendants.

**K. Signature Block.** The name, current mailing address, and telephone number of any attorney of record or pro se party filing a paper shall be typed in a signature block at the end of the paper. A post office box number will be accepted as a mailing address, but a street address also must be provided. An electronic-mail address is required unless the filer is allowed to file in paper format pursuant to exceptions enumerated in the Electronic Case Filing Procedures of the District of Colorado (Civil Cases). A facsimile number is optional. A paper shall be legibly signed in the signature block by the attorney of record or pro se party filing the paper.

**L. Original Papers.** Except for papers filed by facsimile pursuant to D.C.COLO.LCivR 5.1A. and filings made electronically pursuant to D.C.COLO.LCivR 5.6A., an original paper shall be filed with the court.

**M. Notice of Change of Address, E-mail Address, or Telephone Number.** Within five days after any change of address, e-mail address (including any change of e-mail address to be used in the account maintenance link in ECF), or telephone number of any attorney or pro se party, notice of the new address, e-mail address, or telephone number shall be filed.

(Amended Nov. 17, 2010, effective Dec. 1, 2010; amended, effective December 1, 2012.)

## D.C.COLO.LCivR 11.1.

### APPEARANCES

**A. Appearances.** An appearance by or on behalf of a party shall be made in open court or in a pleading, motion, entry of appearance, or other paper personally signed by the individual making the appearance. Only pro se individual parties and members of this court’s bar may appear or sign pleadings, motions, or other papers. Any pleading, motion, or paper listing in a signature block, or purporting to enter an appearance by, any other person, partnership, professional corporation, limited liability company, or other entity may be stricken.

**B. Signature Not to Be Delegated.** The responsibility for signing pleadings, motions, or other papers shall not be delegated.

**C. Signatures and Signature Pages.** Facsimile signatures on documents filed with the court shall have the same legal effect as original signatures on documents filed with the court. If a facsimile signature page with the facsimile signature of a member of this court’s bar is attached to a pleading, motion, or other paper filed with the court, the member of this court’s bar shall maintain the original signature page. At the direction of a judicial officer, the member of this court’s bar may be required to file the original signature page.



**D. Attorney for the United States Government.** This rule shall not be applied or construed in a manner inconsistent with any statute or federal rule governing an attorney for the United States government who appears in a case.

(Amended Nov. 17, 2010, effective Dec. 1, 2010.)

### **D.C.COLO.LCivR 16.1. SCHEDULING CONFERENCE**

A scheduling conference will be convened by a judicial officer to develop a scheduling order. The order setting the scheduling conference will set the deadline for the parties to meet and attempt to agree on a scheduling order. Plaintiff shall prepare the proposed scheduling order, unless counsel or the pro se parties have agreed otherwise. Any area of disagreement shall be set forth separately with brief statements of the reasons for disagreement. It should be expected that the court will make modifications in the proposed order and will discuss limitations on discovery, simplification of the issues, stipulations of fact, and other matters affecting the management of the litigation. Accordingly, counsel responsible for the trial of the case will be present. The schedule established by a scheduling order shall not be modified except upon a showing of good cause and by leave of court.

### **D.C.COLO.LCivR 16.2. SCHEDULING ORDERS**

**A. Instructions for Preparation.** Unless otherwise instructed by a judicial officer, when a scheduling order is required, it shall be prepared in accordance with the Instructions for Preparation of Scheduling Order found at <http://www.cod.uscourts.gov/Forms.aspx>.

**B. Limitations.** Unless otherwise ordered by a judicial officer, scheduling orders for discovery, joinder, and amendment of pleadings are unnecessary in:

1. AP Cases (see Section III - AP Rules); and
2. categories of proceedings listed in Fed. R. Civ. P. 26(a)(1)(B).

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

### **D.C.COLO.LCivR 16.3. FINAL PRETRIAL ORDERS**

Unless otherwise instructed by a judicial officer, when a final pretrial order is required, it shall be prepared in accordance with the Instructions for Preparation of Final Pretrial Order found at <http://www.cod.uscourts.gov/Forms.aspx>.

(Amended, effective December 1, 2012.)

### **D.C.COLO.LCivR 16.6. ALTERNATIVE DISPUTE RESOLUTION**

**A. Alternative Dispute Resolution.** Pursuant to 28 U.S.C. § 652, all litigants in civil cases shall consider the use of an alternative dispute resolution process. A district judge's initiative or a magistrate judge exercising consent jurisdiction may direct the parties to a suit to engage in an early neutral evaluation or other alternative dispute resolution proceeding. To facilitate settlement or resolution of the suit, the district judge or a magistrate judge exercising consent jurisdiction may stay the action in whole or in part during a time certain or until further order. Relief from an order under this section may be had upon motion showing good cause.

**B. Definition of Early Neutral Evaluation.** Early neutral evaluation means a non-binding, non-adjudicative assessment of a case by a magistrate judge.

**C. Disqualification of Neutrals.** A magistrate judge serving as a neutral providing early neutral evaluation may be disqualified under the provisions of 28 U.S.C. §§ 144 or 455.

**D. Designation of Court ADR Administrator.** Pursuant to 28 U.S.C. § 651(d), the Clerk of the Court is designated to implement, administer, oversee, and evaluate the court's alternative dispute resolution program.

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

## IV. PARTIES

### D.C.COLO.LCivR 24.1. CLAIM OF UNCONSTITUTIONALITY

**A. Act of Congress.** A party who questions the constitutionality of an Act of Congress in an action where neither the United States nor any of its agencies, officers, or employees is a party shall file with the court written notice stating the case title, identifying each questioned statute, and describing the grounds on which unconstitutionality is asserted. The party raising such question shall serve a copy of this written notice on the United States Attorney General and the United States Attorney by certified mail, return receipt requested, and file proof of service with the court.

**B. State Statute.** A party who questions the constitutionality of a state statute in an action where neither that state nor any of its agencies, officers, or employees is a party shall file with the court written notice stating the case title, identifying each questioned statute, and describing the grounds on which unconstitutionality is asserted. The party raising such question shall serve a copy of this written notice on the attorney general of the state involved by certified mail, return receipt requested, and file proof of service with the court.

**C. Certification.** On receipt of a notice of unconstitutionality, the court shall comply with the certification provisions of 28 U.S.C. § 2403.

## V. DEPOSITIONS AND DISCOVERY

### D.C.COLO.LCivR 26.1. COMPLIANCE WITH FED. R. CIV. P. 26 REQUIREMENTS

**A. Proposed Scheduling Order.** The tendering of a proposed scheduling order in the form found at <http://www.cod.uscourts.gov/Forms.aspx> shall satisfy the requirement of submitting a written report outlining the discovery plan pursuant to Fed. R. Civ. P. 26(f).

**B. Pretrial Disclosures.** The tendering of a proposed final pretrial order in the form found at <http://www.cod.uscourts.gov/Forms.aspx> shall satisfy the requirement of Fed. R. Civ. P. 26(a)(3) that pretrial disclosures be filed with the court.

(Amended, effective December 1, 2012.)

### D.C.COLO.LCivR 30.1. DEPOSITIONS

**A. Reasonable Notice; Scheduling.** Unless otherwise ordered by the court, "reasonable notice" for the taking of depositions shall be not less than 14 days, as computed under Fed. R. Civ. P. 6. Before sending a notice to take a deposition, counsel or the pro se party seeking the deposition shall make a good faith effort to schedule it by agreement at a time reasonably convenient and economically efficient to the proposed deponent, all counsel of record, and pro se parties.

**B. Limiting Time and Expense.** Prior to scheduling or noticing any deposition, all counsel and pro se parties involved shall confer in a good-faith effort to agree on reasonable means of limiting the time and expense to be spent for that deposition. During that conference, they shall attempt in good faith to agree on a less expensive and less time-consuming method of obtaining the evidence sought including, without limitation, interviewing the witness under oath by telephone or in person.



**D.C.COLO.LCivR 30.2.****EFFECT OF FILING MOTION FOR PROTECTIVE ORDER, MOTION TO LIMIT EXAMINATION, OR OBJECTION TO DISCOVERY ORDER BY MAGISTRATE JUDGE**

**A. Motion for Protective Order or to Limit Examination.** Pending resolution of any motion under Fed. R. Civ. P. 26(c) or 30(d), no party, attorney, or witness is required to appear at the deposition to which the motion is directed until the motion has been resolved. The filing of a motion under either of these rules shall stay the discovery to which the motion is directed until further order of the court.

**B. Objection to Discovery Order by Magistrate Judge.** The filing of an objection, pursuant to Fed. R. Civ. P. 72(a), to an order by a magistrate judge concerning a discovery issue does not stay the discovery to which the order is directed. Any stay of the magistrate judge's order must be sought and obtained separately by motion filed initially with the magistrate judge, and if denied, then with the assigned district court judge. The motion shall be supported by good cause.

**D.C.COLO.LCivR 30.3.****SANCTIONS FOR ABUSIVE DEPOSITION CONDUCT**

**A. Prohibited Conduct.** The following abusive deposition conduct is prohibited:

1. Making objections or statements which have the effect of coaching the witness, instructing the witness concerning the way in which he or she should frame a response, or suggesting an answer to the witness.

2. Interrupting examination for an off-the-record conference between counsel and the witness, except for the purpose of determining whether to assert a privilege. Any off-the-record conference during a recess may be a subject for inquiry by the opposing counsel or pro se party, to the extent the conference is not privileged.

3. Instructing a deponent not to answer a question except when necessary to preserve a privilege, to enforce a limitation on evidence directed by a judicial officer, or to present a motion under Fed. R. Civ. P. 30(d)(3)(A).

4. Filing a motion for protective order or to limit examination without a substantial basis in law.

5. Questioning that unfairly embarrasses, humiliates, intimidates, or harasses the deponent, or invades his or her privacy absent a clear statement on the record explaining how the answers to such questions will constitute, or lead to, competent evidence admissible at trial.

**B. Standing Order; Special Master.** The prohibitions reflected in Section A. of this rule shall be treated as a standing order of the court for purposes of Fed. R. Civ. P. 37(b). Whenever it comes to the attention of a judicial officer that an attorney or party has engaged in abusive deposition conduct, a judicial officer may appoint a special master under Fed. R. Civ. P. 53, at the expense of the attorney or person engaging in such conduct (or of both sides), to attend future depositions, exercise such authority, and prepare such reports as a judicial officer shall direct.

**C. Location of Deposition.** If deposition abuse is anticipated, a judicial officer may order that any deposition be taken at the courthouse or special master's office so that, at the request of any party, witness, or counsel, any dispute may be heard and decided immediately by a judicial officer or special master.

**D. Expenses, Costs, and Fees.** Whenever a judicial officer determines that any party or counsel unreasonably has interrupted, delayed, or prolonged any deposition, whether by excessive questioning, objecting, or other conduct, that party or its counsel, or both, may be ordered to pay each other party's expenses, including without limitation, reasonably necessary travel, lodging, reporter's fees, attorney fees, and videotaping expenses, for that portion of the deposition determined to be excessive. In addition, that party or its counsel, or both, may be required to pay all such costs and expenses for any additional depositions or hearing made necessary by its misconduct.



**D.C.COLO.LCivR 37.1.**  
**FORM OF DISCOVERY MOTIONS**

A motion under Fed. R. Civ. P. 26 or 37 directed to an interrogatory, request, or response under Fed. R. Civ. P. 33 or 34 shall either set forth in the text of the motion the specific interrogatory, request, or response to which the motion is directed, or an exhibit that contains the interrogatory, request, or response shall be attached.

**VI. TRIALS**

**D.C.COLO.LCivR 40.1.**  
**ASSIGNMENT OF CASES**

**A. Assignment in General.** Except as provided in this rule and in D.C.COLO.LCivR 8.1 and 8.2, and Section III - AP Rules, civil cases shall be assigned to judicial officers by random draw. Work parity shall be maintained among active district judges, provided that a majority of active district judges may adjust the assignment of cases to the Chief Judge as may be necessary for the performance of the duties of that office, and may, for good cause, approve special assignment or reassignment of cases among the judicial officers of the court. All other transfers of cases from one judicial officer to another shall be subject to the Chief Judge's approval.

**B. Random Draw by Computer.** The clerk shall maintain a computerized program to assure random and public assignment of new cases on an equal basis among the judicial officers. A senior judge may decline assignment of cases and, on written notice to the Chief Judge, limit participation in the random draw by a stated percentage.

**C. Special Assignment.**

1. If the pro se plaintiff filing a new case already has a case pending or had a case terminated within 12 months of the new filing, the new case shall be assigned to the district judge who was assigned the earlier case.

2. Once a bankruptcy appeal or motion to withdraw the reference has been assigned to a district judge by random draw, any case subsequently filed concerning the same debtor in bankruptcy shall be assigned to the same district judge. The party filing the subsequent case shall notify the clerk in writing of the pending bankruptcy matter.

3. On filing a civil forfeiture proceeding, the United States Attorney shall notify the clerk in writing when a potential claimant is a defendant in a pending criminal case. The civil case shall be assigned to the judge to whom the criminal case was assigned.

4. A new case that is related under D.C.COLO.LCivR 7.5 to a pending case may be assigned to the same judicial officers:

- a. by special reassignment on a majority vote of the active district judges under D.C.COLO.LCivR 40.1A.; or
- b. by transfer with approval of the Chief Judge under D.C.COLO.LCivR 40.1A.; or
- c. by entry of an order granting a motion to consolidate pursuant to Fed. R. Civ. P. 42(a) and D.C.COLO.LCivR 42.1.

**D. "AP" Cases.** On the filing of any AP Case, the clerk will assign a case number without random selection to a district judge designated by the Chief Judge for pre-merits management in accordance with Section III of these rules.

**E. Recusal.** Recusal of an active judicial officer shall be only by written order setting forth the reasons.

**F. Adjustments.** On recusal or special assignment of a case to a judicial officer pursuant to this rule or D.C.COLO.LCivR 42.1, the clerk shall adjust the computerized drawing program to maintain the equal assignment of cases among active district judges.

(Amended, effective December 1, 2011.)

**D.C.COLO.LCivR 40.2.**  
**TRIAL CALENDARS AND EXPEDITED CASE HANDLING**

**A. Calendar; Expedited Cases.** Each judicial officer shall maintain an individual trial calendar with due regard for the priorities and requirements of law. Selected cases may be expedited by the judicial officer on his or her own motion, or on the motion of any party.

**B. Notice of Scheduling Conflict.** Within three days of learning of a scheduling conflict among different courts within the District of Colorado, or between the United States District Court for the District of Colorado and any other federal or state court, counsel or a pro se party shall file a written notice with the court.

**C. Notice of Settlement or Resolution.** Whenever the parties have agreed to settle or otherwise resolve a pending matter, they shall immediately notify the court in writing. The court may provide a deadline for the filing of settlement papers or a stipulation for dismissal.

**D.C.COLO.LCivR 41.1.**  
**DISMISSAL**

A judicial officer may issue an order to show cause why a case should not be dismissed for lack of prosecution or for failure to comply with these rules, the Federal Rules of Civil Procedure, or any court order. If good cause is not shown within the time set in the show cause order, a district judge or a magistrate judge exercising consent jurisdiction may enter an order of dismissal with or without prejudice.

**D.C.COLO.LCivR 41.2.**  
**ADMINISTRATIVE CLOSURE**

A district judge or a magistrate judge exercising consent jurisdiction may direct the clerk to close a civil case administratively subject to reopening for good cause. Administrative closure of a case terminates any pending motion. Reopening of a case does not reinstate any such motion.

(Amended, effective December 1, 2012.)

**D.C.COLO.LCivR 42.1.**  
**MOTIONS TO CONSOLIDATE**

A motion to consolidate shall be decided by the district judge to whom the oldest numbered case involved in the proposed consolidation is assigned for trial. Rulings on motions to consolidate shall be given priority. Cases consolidated shall be assigned for all further purposes to the judicial officer to whom the lowest numbered consolidated case previously was assigned for trial. A case not consolidated shall remain assigned to the judicial officer before whom it was pending when the motion to consolidate was filed.

**D.C.COLO.LCivR 43.1.**  
**HEARING AND TRIAL PROCEDURES**

Procedures pertaining to the hearing in or trial of a particular case will be established by the judicial officer trying the case. The procedures shall be in accordance with any written instructions of that judicial officer.

**D.C.COLO.LCivR 43.2.**  
**ACCOMMODATIONS**

At least seven days prior to a hearing or trial, counsel or a pro se party shall notify the court of any necessary Americans with Disabilities Act accommodations.

(Amended, effective December 1, 2011.)

**D.C.COLO.LCivR 45.1.  
SUBPOENA SERVICE**

Unless otherwise ordered by the court, a subpoena shall be served at least 48 hours before the time for appearance set in the subpoena. The 48 hours shall be calculated in accordance with Fed. R. Civ. P. 6(a)(2).

**D.C.COLO.LCivR 47.1.  
COMMUNICATION WITH JURORS**

No party or attorney shall communicate with, or cause another to communicate with, a juror or prospective juror before, during, or after any trial without written authority signed by the judicial officer to whom the case is assigned for trial.

**VII. JUDGMENT****D.C.COLO.LCivR 54.1.  
TAXATION OF COSTS**

Each judgment or final order shall indicate which party or parties are entitled to costs. A bill of costs must be filed on the form provided by the court within 14 days after entry of the judgment or final order. Costs will be taxed by the clerk. Prior to appearance before the clerk, counsel or a pro se party seeking costs shall file a written statement that a reasonable effort has been made, in a conference with the opposing counsel or pro se party, to resolve disputes regarding costs. If costs are resolved, a stipulation setting forth the amount of costs shall be filed with the court.

**D.C.COLO.LCivR 54.2.  
JURY COST ASSESSMENT**

Whenever any civil action scheduled for jury trial is settled or otherwise resolved after noon on the last day before trial, jury costs may be assessed against any of the parties and/or counsel. The last day before trial shall be calculated in accordance with Fed. R. Civ. P. 6(a)(1). Likewise, when any civil action is settled during jury trial before verdict, jury costs may be assessed against any of the parties and/or counsel.

**D.C.COLO.LCivR 54.3.  
ATTORNEY FEES**

**A. Motion Supported by Affidavit.** Unless otherwise ordered by the court, a motion for attorney fees shall be supported by one or more affidavits.

**B. Content of Motion.** A motion shall include the following for each person for whom fees are claimed:

1. a detailed description of the services rendered, the amount of time spent, the hourly rate, and the total amount claimed; and
2. a summary of relevant qualifications and experience.

**D.C.COLO.LCivR 56.1.  
SUMMARY JUDGMENT MOTIONS AND BRIEFS**

**A. Motion.** A motion under Fed. R. Civ. P. 56 for summary judgment or partial summary judgment shall include a statement of undisputed facts and be supported by argument and a recitation of legal authority incorporated into the motion in lieu of a separate opening brief. A response brief shall be filed within 21 days after the date of service of the motion, or such other time as the court may order. A reply brief may be filed within 14 days of the date of service of the opposing brief, or such other time as the court may order.



**B. Cross Motion.** A cross motion for summary judgment shall not be included in a response brief. A cross motion shall be made in a separate motion and be subject to Section A. of this rule.

**C. Exhibits to Motion or Briefs.** Voluminous exhibits are discouraged. Parties shall limit exhibits to essential portions of documents. Unless otherwise ordered by the court:

1. Copies of documents attached as exhibits to an opening brief shall not be attached as exhibits to a response brief. A responding party shall refer to the exhibits attached to the opening brief. If it is necessary for a responding party to rely on additional exhibits, the additional exhibits shall be attached to the response brief.

2. Copies of documents attached as exhibits to the opening brief or response brief(s) shall not be attached as exhibits to a reply brief. If it is necessary for the moving party to rely on additional exhibits, the additional exhibits shall be attached to the reply brief and consecutively numbered or lettered from the last exhibit attached to the opening brief.

(Amended Nov. 17, 2010, effective Dec. 1, 2010.)

## VIII. PROVISIONAL AND FINAL REMEDIES

### D.C.COLO.LCivR 65.1.

#### TEMPORARY RESTRAINING ORDERS

**A. Motion.** An application for temporary restraining order shall be made in a motion separate from the complaint. A motion shall be accompanied by a certificate of counsel or pro se party, or other proof satisfactory to the court, stating:

1. that actual notice of the time of filing the motion, and copies of all pleadings and papers filed in the action to date or to be presented to the court at the hearing, have been furnished to the adverse party; or

2. the efforts made by the moving party to give such notice and furnish such copies. The provisions of D.C.COLO.LCivR 7.1A. shall apply to any such motion. Except in accordance with Fed. R. Civ. P. 65(b), the court will not consider an ex parte motion for temporary restraining order.

**B. Proposed Order.** A proposed temporary restraining order shall be submitted with a motion for temporary restraining order.

**C. Information Sheet.** A properly completed temporary restraining order information sheet found at <http://www.cod.uscourts.gov/Forms.aspx> shall be given to the clerk at the time of filing of the motion for temporary restraining order.

(Amended, effective December 1, 2012.)

### D.C.COLO.LCivR 67.1.

#### BONDS AND OTHER SURETIES

**A. Personal Surety.** An attorney in any case, or a party or spouse of a party in a civil case, shall not be accepted as a personal surety on any bond filed in that case.

**B. Restriction.** No person, corporation, partnership, or other association or entity may act as his, her, or its own surety in a civil case.

**C. Surety Company; Power of Attorney.** Where the surety on a bond is a surety company approved by the United States Department of the Treasury, a power of attorney showing the authority of the agent signing the bond shall be on file with the clerk.

### D.C.COLO.LCivR 67.2.

#### COURT REGISTRY

##### A. Deposit of Funds in Registry

Unless a statute requires the deposit of funds without leave of court, no money shall be sent to the court or its officers for deposit into the court's registry except pursuant to court order. On depositing the funds, the depositing person must identify in writing the order

authorizing deposit by the relevant docket entry in the court's Electronic Case Filing system.

**B. Investment of Registry Funds**

All funds deposited into the registry of the court will be placed in a form of interest bearing account. Unless otherwise ordered by the court, the Court Registry Investment System (CRIS) shall be the authorized investment mechanism.

**C. Registry Fee**

Registry fees will be deducted in accordance with 28 U.S.C. § 1914 and regulations promulgated thereunder.

**D. Disbursement of Registry Funds**

No funds in the registry shall be disbursed except by order of court. Any proposed court order to disburse funds must include the payee's full name, complete address and amount to be disbursed to that payee. If more than \$10.00 of interest is to be disbursed, the proposed order must be accompanied by a completed IRS Form W-9 (which shall be filed subject to restricted access). For disbursement of funds, the clerk must be provided in writing the order authorizing disbursement by reference to the relevant docket entry in the court's Electronic Case Filing system.

(Amended, effective December 1, 2011.)

## **IX. SPECIAL PROCEEDINGS**

### **D.C.COLO.LCivR 72.1.**

#### **GENERAL AUTHORITY AND DUTIES OF MAGISTRATE JUDGES**

**A. General Authority.** Except as restricted by these rules, magistrate judges may exercise all powers and duties authorized by federal statutes, regulations, and the Federal Rules of Civil Procedure.

**B. Duties.** Each magistrate judge may:

1. issue administrative inspection warrants;
2. issue civil seizure warrants pursuant to 21 U.S.C. § 881 and 18 U.S.C. § 981-983.
3. issue search and seizure warrants for levy pursuant to the Internal Revenue Code;
4. act on postjudgment matters arising under Fed. R. Civ. P. 69, including:
  - a. issue writs;
  - b. issue orders directing funds to be paid into or disbursed from the registry of the court;
  - c. hold hearings and make recommendations to the district judge on substantive issues including the liability of a party under a writ of garnishment or execution;
  - d. perform duties set forth in chapter 176 of Title 28 United States Code, as assigned by the court pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008;
5. make determinations and enter appropriate orders pursuant to 28 U.S.C. § 1915 with respect to any suit, action, or proceedings in which a request is made to proceed in forma pauperis;
6. perform duties set forth in D.C.COLO.LCivR 8.1 and 8.2;
7. make determinations and enter appropriate orders on discovery disputes in cases pending in other federal courts or courts of another country;
8. exercise contempt authority as authorized by law; and
9. issue administrative subpoenas as authorized by law.

**C. Other Duties.** On reference by a district judge, a magistrate judge may:

1. conduct pretrial conferences, early neutral evaluations, settlement conferences, and other nondispositive pretrial proceedings;
2. handle petitions to perpetuate testimony pursuant to Fed. R. Civ. P. 27; and



3. hold hearings and make recommendations to the district judge on dispositive matters.

(Amended, effective December 1, 2012.)

#### **D.C.COLO.LCivR 72.2.**

### **CONSENT JURISDICTION OF MAGISTRATE JUDGES**

**A. Designation.** Pursuant to 28 U.S.C. § 636(c)(1) and subject to the provisions of this rule, all full-time magistrate judges in the District of Colorado are specially designated to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment in the case. This rule, implementing 28 U.S.C. § 636(c) consent jurisdiction in the District of Colorado, does not affect assignments to magistrate judges under other court rules and orders of reference.

**B. Prohibition.** No judicial officer, court official, or court employee may attempt to influence the granting or withholding of consent to the reference of any civil matter to a magistrate judge under this rule. The form of notice of right to consent to disposition by a magistrate judge shall make reference to the prohibition and shall identify the rights being waived.

**C. Notice.** On the filing of any civil case, the clerk shall deliver to the plaintiff(s) written notice of the right of the parties to consent to disposition of the case by a magistrate judge pursuant to 28 U.S.C. § 636(c) and the provisions of this rule. The written notice shall be in such form as the district judges shall direct. The clerk shall also provide copies of such notice to be attached to the summons and thereafter served upon the defendant(s) in the manner provided by Fed. R. Civ. P. 4. A failure to serve a copy of such notice upon any defendant shall not affect the validity of the service of process or personal jurisdiction over the defendant(s).

**D. Unanimous Consent; Determination.** To consent to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c), all parties shall complete and file a Consent to the Exercise of Jurisdiction by a United States Magistrate Judge form found at <http://www.cod.uscourts.gov/Forms.aspx>. Written consent to proceed before a magistrate judge must be filed no later than 14 days after the discovery cut-off date. In cases not requiring discovery, the parties shall have 40 days from the filing of the last responsive pleading to file their unanimous consent. When there is such consent, the magistrate judge shall forthwith notify the assigned district judge, who will then determine whether to enter an order of reference pursuant to 28 U.S.C. § 636(c).

**E. Assignment.** On entry of an order of reference pursuant to 28 U.S.C. § 636(c), the civil action will be assigned to the magistrate judge then assigned to the case.

**F. Additional Parties.** Any party added to the action or served after reference to a magistrate judge under this rule shall be notified by the clerk of the right to consent to the exercise of jurisdiction by the magistrate judge pursuant to 28 U.S.C. § 636(c). If any added party does not file a consent to proceed before a magistrate judge within 21 days from the date of mailing of the notice, the action shall be returned to the assigned district judge for further proceedings.

**G. Vacating Reference.** The district judge, for good cause shown on the district judge's own initiative or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate judge under this rule.

**H. Appeal.** On entry of a judgment in any civil action on consent of the parties under 28 U.S.C. § 636(c) authority, an appeal shall be directly to the United States Court of Appeals for the Tenth Circuit in the same manner as an appeal from any other judgment of this court.

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

#### **D.C.COLO.LCivR 72.3.**

### **REFERENCE OF DISPOSITIVE MOTIONS TO MAGISTRATE JUDGES**

**A. Designation.** Pursuant to 28 U.S.C. § 636(c)(1) and subject to the provisions of this rule, all full-time magistrate judges in the District of Colorado are specifically designated to make final determination of dispositive motions that have been pending for

more than six months. Dispositive motions include motions to dismiss, motions for transfer or for change of venue, motions to remand, motions for summary judgment, and motions for partial summary judgment.

**B. Unanimous Consent; Determination.** After a dispositive motion has been pending for more than six months, if all parties consent to the final determination of the dispositive motion by a magistrate judge, the parties shall file an appropriate notice. On receipt of such notice, the district judge shall determine whether to enter an order pursuant to 28 U.S.C. § 636(c).

**C. Prohibition.** No judicial officer, court official, or court employee may attempt to influence the granting or withholding of consent to the reference of a dispositive motion to a magistrate judge under this rule.

**D. Reference.** On entry of an order of reference of a dispositive motion pursuant to 28 U.S.C. § 636(c), the motion shall be referred to a magistrate judge by random draw, excluding the magistrate judge previously assigned.

**E. Vacating Reference.** A district judge, for good cause shown on the district judge's own initiative or under extraordinary circumstances shown by a party, may vacate a reference of a dispositive motion to a magistrate judge under this rule.

**F. Appeal.** In the event that a magistrate judge grants a dispositive motion and directs the entry of final judgment, an appeal shall be directly to the United States Court of Appeals for the Tenth Circuit in the same manner as an appeal from any other judgment of this court.

## **X. DISTRICT COURT AND CLERK**

### **D.C.COLO.LCivR 77.1. TIME AND PLACE OF FILING**

If filed electronically, all pleadings, motions, briefs, and other papers shall be filed not later than 11:59:59 p.m. (Mountain Time) on the day required, unless otherwise directed by a judicial officer. If filed otherwise, such pleadings, motions, briefs, and other papers shall be filed during the business hours of the office of the clerk from 8:00 a.m. to 5:00 p.m. (Mountain Time) Monday through Friday.

### **D.C.COLO.LCivR 77.2. EX PARTE COMMUNICATION WITH JUDICIAL OFFICERS**

In the absence of previous authorization, no attorney or party to any proceeding shall send letters, pleadings, or other papers or copies directly to a judicial officer. Unless otherwise instructed, all matters to be called to a judicial officer's attention shall be submitted through the clerk, with copies served on all other parties or their attorneys. No attorney or party shall contact orally a judicial officer regarding any case by telephone, in person, or through any other means, unless all other parties in the matter, or their attorneys, are present or on the telephone.

### **D.C.COLO.LCivR 79.1. CUSTODY OF FILES AND EXHIBITS**

Pleadings, other papers, and exhibits in court files shall not be removed from the clerk's office or the court's custody except by written court order.

### **D.C.COLO.LCivR 79.2. INSPECTION OF EVIDENCE**

Photographic negatives, tape recordings, contraband including drugs and narcotics, firearms, currency, negotiable instruments, computer disks or tapes, and other items designated by a judicial officer, while in the clerk's custody, shall not be available for



inspection by any person except while in the presence of and under the control of the clerk. The clerk may limit or preclude access and copying in order to preserve such evidence.

## **XI. GENERAL PROVISIONS**

### **D.C.COLO.LCivR 81.1. PROCEDURE FOR REMOVAL**

**A.** A notice of removal shall comply with 28 U.S.C. § 1446(a).

**B.** Within 14 days of the filing of the notice of removal, the removing party shall file a current docket sheet (register of actions) and shall separately file each pending motion, petition, and related response, reply, and brief.

**C.** If a hearing in the state court has been set before a case is removed, counsel or the pro se party removing the case shall notify the state judge forthwith of the removal and shall notify the federal judge to whom the case is assigned of the nature, time, and place of the state court setting.

(Amended Nov. 17, 2010, effective Dec. 1, 2010.)

### **D.C.COLO.LCivR 83.1. CAMERAS AND RECORDING DEVICES**

**A. Permissible Devices.** After clearing security, an electronic device, including, but not limited to, a cellular telephone, a smartphone, a laptop computer, or a personal data assistant (PDA), regardless of the technology used or the name by which the device is marketed, may be brought into any public area in the United States Courthouse or any location in which court business and proceedings are conducted.

**B. Impermissible Uses of Permissible Devices.** No person shall use a permissible device defined in Section A to take photographs or to make audio or video recordings in any public area in the United States Courthouse or any other location in which court business and proceedings are conducted. No person shall use a permissible device defined in Section A to take photographs or to make audio or video recordings in any courtroom or chambers except as authorized by the judicial officer having direct control of that space.

(Amended, effective December 1, 2011.)

### **D.C.COLO.LCivR 83.2. SECURITY**

**A. Procedures.** All persons entering a building where court is being held shall be subject to security procedures provided for that building.

All briefcases, purses, parcels, bags, backpacks, and other items shall be passed through X-ray scanners and shall be subject to search. This rule shall apply at such other places as a judicial officer may direct.

Failure to obey this rule shall be grounds for refusing admission to the buildings where court is being held, and may subject the offender to detention, arrest, and prosecution as provided by law, or to a contempt proceeding.

**B. Identification or Information.** On request of a United States marshal, court security officer, federal protective service officer, or court official, anyone within or seeking entry to any court facility shall produce identification and state the nature of his or her business at court. Failure to provide identification or information shall be grounds for removal or exclusion from the facility.

**C. Purpose.** This rule and these procedures are necessary in the interest of public safety and to maintain orderly court procedures.

### **D.C.COLO.LCivR 83.3. THE BAR OF THE COURT**

**A. Applicant Information.** An applicant for admission to the bar of this court must be a person licensed by the highest court of a state, federal territory, or the District of

Columbia, be on active status in a state, federal territory or the District of Columbia, and be a member of the bar in good standing in all courts and jurisdictions where he or she has been admitted. Each applicant for admission shall complete an approved form provided by the clerk. Each applicant shall pay to the clerk the fee prescribed by the court.

**B. Entry of Appearance.** An attorney's entry of appearance by signing a pleading, motion, or other paper does not constitute entry of appearance by that attorney's firm.

**C. Consent to Jurisdiction; Familiarity With Local Rules.** An attorney who applies for admission to the bar of this court:

1. consents to this court's exercise of disciplinary jurisdiction over any alleged misconduct, and
2. certifies familiarity with the local rules of this court.

**D. Withdrawal of Appearance.** An attorney who has appeared in a case may seek to withdraw on motion showing good cause. Withdrawal shall be effective only on court order entered after service of the notice of withdrawal on all counsel of record and on the withdrawing attorney's client. A motion to withdraw must state the reasons for withdrawal unless the statement would violate the rules of professional conduct. Notice to the attorney's client must include the warning that the client personally is responsible for complying with all court orders and time limitations established by any applicable rules. Where the withdrawing attorney's client is a corporation, partnership, or other legal entity, the notice shall state that such entity cannot appear without counsel admitted to practice before this court, and absent prompt appearance of substitute counsel, pleadings, motions, and other papers may be stricken, and default judgment or other sanctions may be imposed against the entity.

**E. Member in Good Standing.** An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. "In good standing" means not suspended or disbarred by any court for any reason. An attorney whose suspension or disbarment has been stayed by order of the disciplining court prior to the effective date of the suspension or disbarment remains in good standing. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. On notice to this court of lack of good standing from the suspending or disbarring jurisdiction, or otherwise, the clerk of this court shall make a notation in the court record of such lack of good standing.

1. *Self-Reporting Requirements.* Whenever a member of the bar of this court has been suspended or disbarred for any reason by any court, including when the suspension is stayed, the attorney shall, within 10 days of the date the disciplinary order enters, give written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of that court's action.

2. *Separate Violation.* Failure to self-report or to cease practicing before the bar of this court as required by this rule are themselves separate causes for disciplinary action, except that failure to self-report administrative suspensions for failure to pay an annual registration fee or to comply with mandatory continuing legal education requirements shall not be cause for further disciplinary action by this court.

3. *Reinstatement or Readmission.* Reinstatement following administrative suspension for failure to pay an annual fee or to comply with mandatory continuing legal education requirements shall be automatic upon receipt by this court of written proof of reinstatement by the original suspending jurisdiction. Application for reinstatement or readmission following suspension or disbarment from practice as a member of the bar of this court for any other reason shall be made in accordance with the terms of D.C.COLO.LCivR 83.5I.

**F. Relief From Rule of Good Standing.** It is presumed that discipline by another court against a member of this court's bar is appropriate. In order to obtain relief, the attorney so disciplined has the burden to establish, by clear and convincing evidence, that:

1. the procedure resulting in discipline by the court was so lacking in notice or opportunity to be heard as to deny due process,
2. the application of D.C.COLO.LCivR 83.3E. would result in grave injustice, or



3. the kind of misconduct established has been held by this court to warrant substantially less severe discipline. Applications under this section shall be filed with or referred to the Committee on Conduct, which shall proceed in accordance with the provisions of D.C.COLO.LCivR 83.5D.

(Amended, effective December 1, 2012.)

#### **D.C.COLO.LCivR 83.4.**

### **STANDARDS OF PROFESSIONAL RESPONSIBILITY**

Except as otherwise provided by Administrative Order, the Colorado Rules of Professional Conduct adopted by the Colorado Supreme Court on April 12, 2007, and effective January 1, 2008, found at <http://www.cod.uscourts.gov/Forms.aspx> are adopted as standards of professional responsibility applicable in this court.

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

#### **D.C.COLO.LCivR 83.5.**

### **ATTORNEY DISCIPLINE**

**A. Disciplinary Panel.** The Chief Judge shall appoint a panel of three district judges to constitute the Disciplinary Panel (the “Panel”). The Panel shall have jurisdiction over all judicial proceedings involving disbarment, suspension, censure, or other lawyer discipline. The Chief Judge at any time may designate additional judges to serve as alternates on the Panel.

**B. Committee on Conduct.** The court has established a standing Committee on Conduct (the “Committee”) consisting of 12 members of this court’s bar, each appointed for three years and until his or her successor is appointed. Any member appointed to fill a vacancy shall serve the unexpired term of his or her predecessor. Where a member holds over after expiration of the term for which appointed, the time of additional service shall be deemed part of the successor member’s term. The court shall designate a chairperson of the Committee and a vice-chairperson who shall act during the chairperson’s absence or disability. Members of the Committee shall serve without compensation, but, insofar as possible, their necessary expenses shall be paid by the clerk from the fund in which admission and annual registration fees paid by members of the bar are deposited. No member of the Committee shall serve more than two consecutive terms.

**C. Duties of the Committee.** The Committee shall receive, investigate, consider, and act upon complaints against members of the bar, applications for reinstatement or readmission, allegations that a member of this court’s bar is incapable of practicing law due to physical or mental disability or substance abuse, and other similar matters concerning attorneys. The Committee chairperson shall appoint one or more members to present and prosecute charges and to prepare and present orders and judgments as directed by the Panel. The Committee is authorized and directed to report its findings concerning any disciplinary action to the grievance committee of any other bar or court of which the attorney in question may be a member. Additionally, the Committee is authorized to reveal such information to any other court-authorized grievance body as the Committee deems appropriate and consistent with the objectives of this rule. The Committee also may perform any additional duties implied by these rules or assigned by order of the Panel. All requests for investigation submitted to the court or Committee and all complaints filed with the Committee shall be privileged, and no lawsuit may be predicated thereon. Persons performing official duties under this rule, including but not limited to members of the Committee, staff, and members of the bar or others working under the Committee’s direction, shall be immune from suit for all acts and omissions occurring in the course of their official duties. All proceedings of the Committee shall be confidential.

**D. Complaints.** Any complaint against a member of this court’s bar for any conduct which may justify any disciplinary action (not limited to suspension or disbarment) shall be filed in writing under oath, except that complaints filed by a judicial officer of this court need not be under oath. Complaints shall be filed with or referred to the Committee. The Committee shall admonish all persons concerned with any complaint, investigation, or

inquiry that absolute confidentiality must be maintained and that violation of this rule will be deemed contempt of this court.

**E. Investigation of Complaints.** When a complaint is received, it shall be referred by the chairperson of the Committee to a Subcommittee consisting of three Committee members designated by the chairperson who shall appoint one of them as Subcommittee chairperson. The chairperson or vice-chairperson of the Committee may be designated as a member of a Subcommittee.

1. *Service of Complaint and Answer.* The Subcommittee shall investigate complaints referred to it by the chairperson of the Committee. A copy of the complaint shall be served on the member of the bar against whom the complaint has been made (the "respondent") by certified mail, return receipt requested, addressed to his or her most current address on file with the clerk. No answer shall be required unless specifically requested of the respondent by the Subcommittee investigating the complaint. If an answer is requested by the Subcommittee, the respondent shall file an answer under oath with the Subcommittee within 20 days of the date of the request or such later date as agreed upon by a majority of the Subcommittee.

2. *Hearings, Witnesses, and Documents.* A Subcommittee may hold hearings upon reasonable notice to the complainant and respondent. The chairperson of the Subcommittee conducting the inquiry shall serve as a master with authority to order issuance of subpoenas commanding the presence of witnesses and/or production of designated books, papers, documents, or other tangibles at the times and places stated in the subpoena. The Subcommittee chairperson, as master, is authorized to administer oaths. The name of any witness who fails or refuses to attend or testify under oath may be certified to the Panel, which may initiate contempt proceedings and impose appropriate punishment.

**F. Resolution of the Complaint by the Committee on Conduct.** On completion of its investigation, the Subcommittee shall report its recommendations to the full Committee. The Committee may, by a vote of a majority of the Committee in attendance, instruct the Subcommittee in any one of the following ways:

1. *Dismissal of the Complaint.* If the Committee concludes that the complaint is without merit or other grounds justify its dismissal (e.g., the claims are best handled in a different forum), the Committee shall instruct the Subcommittee to prepare a letter so advising the complainant and the respondent, to be signed by the chairperson or vice-chairperson of the Committee.

2. *Letter of Admonition.* If the Committee concludes, based on the report of the Subcommittee, that the misconduct or, in the case of alleged disability or substance abuse, the cause for concern, is sufficiently significant that the complaint should not be dismissed as without merit, but may not warrant submitting charges to the Panel, the Committee may issue a private letter of admonition to the respondent. The complainant shall be notified that the letter of admonition was issued but shall not be provided with a copy of the letter of admonition. Neither the fact that the letter of admonition was issued nor its content otherwise shall be disclosed by the Committee. An attorney receiving a letter of admonition shall be advised of the right to request in writing, within 20 days after receiving the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the admonition is based. On timely filing of such a request, the letter of admonition shall be vacated and the Subcommittee shall proceed to prepare charges in accordance with the formal procedures provided in these rules.

3. *Submission of Charges to the Court.* The Committee may instruct the Subcommittee to prepare charges and submit them to the Panel or, with or without preparing charges, may refer the matter to Colorado Attorney Regulation Counsel or another court-authorized grievance body. If charges are prepared and submitted to the Panel, and thereafter the Panel orders the charges filed, the clerk shall file them and forthwith issue a summons commanding the respondent to answer. Except as hereinafter provided, the summons and a copy of the charges shall be served by a United States marshal. A respondent who cannot be served in Colorado may be served by filing a copy of the summons and charges with the clerk, who shall in turn send a copy of the



summons and charges by certified mail, return receipt requested, to the last office address the respondent filed with the clerk. The respondent shall answer the charges within 30 days from the date of service. Absent a timely answer, the charges may be taken as confessed, and the Panel may conduct further proceedings, which may be held on an *ex parte* basis as the Panel deems appropriate and may enter judgment against the respondent without hearing or further notice to the respondent.

**G. Disciplinary Panel Hearings and Orders.** A respondent against whom charges have been filed shall be entitled to be represented by counsel, at his or her own expense unless indigent. When the respondent has filed an answer, an evidentiary hearing shall be scheduled by the Panel. The Panel may ask the chairperson of the Committee to appoint one or more members of the Committee to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee in prosecuting the charges. If the charges are sustained by clear and convincing evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent. A respondent who is suspended or disbarred shall be enjoined from practicing law before this court and the judgment shall so recite. Any violation of the judgment shall be deemed a contempt of court.

**H. Rule Not to Deprive Court of Inherent Powers.** Nothing herein stated shall be deemed to negate or diminish this court's inherent disciplinary powers.

**I. Application for Reinstatement or Readmission.**

1. *General Procedure.* An attorney who has been suspended or disbarred may apply for reinstatement or readmission at the end of the disciplinary period. Each applicant for readmission or reinstatement shall complete an approved form provided by the clerk. Reinstatement or readmission is neither automatic nor a matter of right. Every application for reinstatement or readmission shall be investigated by one or more members of the Committee appointed by the Committee's chairperson. Following investigation, the Committee shall prepare a recommendation on the application. The recommendation and supporting documents shall be submitted to the Panel for decision. Reinstatement or readmission may be subject to conditions such as monitoring, reporting, testing, and education.

2. *Relationship to D.C.COLO.LCivR 83.3E. and D.C.COLO.LCrR 57.5E.* Suspension or disbarment of an attorney by any court may result in suspension or disbarment in a court other than the original disciplining court. An attorney who has been reinstated or readmitted by the original disciplining court but who remains suspended or disbarred in a different court for the same conduct as that at issue in the original disciplining court may apply for reinstatement or readmission pursuant to D.C.COLO.LCivR 83.5I.1 and is not subject to D.C.COLO.LCivR 83.3E. and D.C.COLO.LCrR 57.5E. requiring attorneys to be in good standing in all courts where admitted in order to be or remain admitted to the bar of this court.

**J. Effect of Conviction or Resignation from Another Bar While Under Investigation, and Duty to Report Pendency of Criminal Offenses.**

1. *Attorney Subject to a Criminal Conviction.* Any member of this court's bar who is convicted of a crime punishable by a term of imprisonment of more than one year, shall, within 10 days of the conviction, give written notice to the clerk of this court of the conviction including the terms of the conviction, the court entering the conviction and the date of conviction. On notice to the court by the attorney or otherwise, the convicted attorney shall be suspended from practicing law in this court. On the conviction becoming final with no further right of appeal, the Panel shall disbar the attorney from practicing as a member of the bar of this court. For purposes of this rule, "conviction" shall include any ultimate finding of fact in a criminal proceedings that the individual is guilty of a crime punishable by a term of imprisonment of more than one year, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of nolo contendere, and irrespective of whether the entry of judgment or imposition of sentence is suspended or deferred by the court.

2. *Attorney Under Investigation Resigning from Bar of Another Court.* Any member of this court's bar who resigns from the bar of any other federal or state court while an investigation into allegations of misconduct is pending shall, within 10 days of resigning, give written notice of such resignation to the clerk of this court. On



receipt of notice of resignation from the attorney or otherwise, the Panel shall disbar the attorney from practicing as a member of the bar of this court.

3. *Duty of Attorney to Notify Court of Pendency of Criminal Charges.* Any member of this court's bar who is charged in any court with a criminal offense that may subject the attorney to discipline in this court shall so notify the clerk in writing within 10 days after the charge is filed.

**K. Mental or Physical Incompetence or Disability, or Substance Abuse.**

1. *Declaration of Mental Incompetence.* On receiving proof that a member of this court's bar judicially has been declared incompetent or involuntarily committed to a mental hospital, the Panel may order that the attorney be suspended from practicing law immediately and indefinitely until further order. A copy of the order shall be served upon the attorney, his or her guardian, and the director of the mental hospital.

2. *Role of the Committee on Conduct.* In matters involving an allegation that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Subcommittee assigned by the Chair of the Committee may take or direct whatever action it deems appropriate to determine whether the attorney is disabled or is adversely affected by substance abuse, including examination by such experts the Subcommittee shall designate. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall result in certification of the name of the attorney to the Panel, which may initiate contempt proceedings and impose appropriate punishment. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Committee for consideration along with all other evidence. If the Committee determines that the attorney is incapable of practicing law, the Committee shall petition the Panel for an order of suspension. As an alternative to examination an attorney may elect to go on disability inactive status, and the Committee shall advise the attorney of this option prior to ordering examination. Any attorney who makes such an election shall be required to apply for reinstatement pursuant to D.C.COLO.LCivR 83.5I. and 83.5K.5. before practicing again in this court.

3. *Role of the Disciplinary Panel.* On petition by the Committee suggesting that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Panel may take or direct whatever action it deems appropriate to determine whether the attorney is disabled, including examination by medical experts who the Panel shall designate if no such examination had been ordered previously by the Committee or if the Panel desires further examination. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall be prima facie evidence of disability. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Panel for consideration along with all other evidence. If the Panel concludes from the evidence that the attorney is incapable of practicing law competently, it shall order him or her suspended until further order. Prior to ordering suspension the Panel may, in its sole discretion, offer the attorney an opportunity to go on disability inactive status voluntarily. The Panel may provide respondent notice of the proceedings and may appoint an attorney to represent a respondent who is without representation. Any attorney who elects disability inactive status or is suspended because of mental or physical disability or substance abuse must apply for reinstatement pursuant to D.C.COLO.LCivR 83.5I. and 83.5K.5. before practicing again in this court.

4. *Claim of Disability During Disciplinary Proceedings.* If during a disciplinary proceeding the respondent attorney asserts a disability by reason of mental or physical illness or substance abuse, rendering adequate defense impossible, the Panel shall order the respondent suspended from practicing law until there can be a determination pursuant to D.C.COLO.LCivR 83.5K.2. and 3. of his or her capacity to practice law.

5. *Attorney Placed on Disability Inactive Status by Other Courts.* A member of this court's bar who is placed on disability inactive status by any state or federal court is prohibited from practicing before this court during such status. Reinstatement upon

termination of disability inactive status shall be in accordance with D.C.COLO.LCivR 83.5K.5. through K.9.

**6. *Reinstatement After Disability Inactive Status or Suspension Because of Disability.***

a. An attorney who has elected to go on disability inactive status or who has been suspended for mental or physical disability or substance abuse may apply to the Panel for reinstatement not more than once a year, or more frequently if the Panel so directs. The application shall be granted upon a showing by clear and convincing evidence that the attorney no longer is disabled and is fit to practice law. The Panel, or the Committee if the Panel chooses to delegate initial consideration of the application for reinstatement to the Committee pursuant to D.C.COLO.LCivR 83.5L., may take or direct such action as it deems appropriate to determine whether the attorney's disability has been remedied, including examination by such medical experts as the Panel or Committee may designate. The Panel or Committee may direct that any examination expenses be paid by the attorney.

b. An attorney suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital, who thereafter judicially is declared competent, may apply for reinstatement upon proper proof of the latter declaration, and reinstatement may be subject to such conditions as the Panel may require.

**7. *Evidentiary Hearing.*** If the Panel holds an evidentiary hearing to determine whether an attorney is disabled or to consider an application for reinstatement, the chairperson of the Committee shall appoint one or more members to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee.

**8. *Waiver of Physician/Patient Privilege.*** Filing an application for reinstatement constitutes waiver of any physician-patient privilege with respect to any related treatment of the attorney. The attorney shall disclose the name and address of every psychiatrist, psychologist, physician, hospital, or other health-care provider that has examined or treated him or her since three (3) years prior to his or her suspension and shall furnish the Panel or the Committee written consent to obtain from these sources information and records requested by the Panel or the Committee or its designated medical experts.

**9. *Orders Transferring.*** Orders transferring attorneys to or from disability inactive status are matters of public record.

**L. *Complaint against Sitting Member of the Committee on Conduct.*** If a complaint is lodged against a sitting member of the Committee, in lieu of investigation by any other sitting member of the Committee the court shall appoint a Special Subcommittee consisting of three members of the bar of the court who in the past have served on the Committee but not as co-members with the member against whom the complaint is lodged, or such other members of the bar of the court as the court may choose. The court shall designate one of the three as chair of the Special Subcommittee. The Special Subcommittee shall follow the procedures set out in 83.5E., F., and G., with the exception that the Special Subcommittee shall work directly with the Panel rather than the full Committee.

**M. *Costs.***

**1. *Disciplinary Proceedings.*** In all cases where discipline is imposed by the Disciplinary Panel, it may assess against the respondent all or part of the costs incurred in connection with the disciplinary proceedings.

**2. *Reinstatement and Readmission Proceedings.*** An attorney who petitions for reinstatement from a suspension or readmission after disbarment shall bear the cost of such proceedings.

**3. *Disability Proceedings.*** The Disciplinary Panel may order an attorney to bear the cost of all or any part of the disability proceedings, including the cost of any examinations ordered.

(Amended Nov. 17, 2010, effective Dec. 1, 2010; amended, effective December 1, 2012.)



**D.C.COLO.LCivR 84.1.**  
**BANKRUPTCY MATTERS**

**A. Automatic Referral.** All cases under Title 11, United States Code, and all proceedings arising under Title 11 or arising in or related to cases under Title 11, shall be automatically referred to the bankruptcy judges of this district pursuant to 28 U.S.C. § 157 without further order. All papers in those cases shall be filed directly in the bankruptcy court, and the bankruptcy judges of this district shall exercise the jurisdiction of this court in bankruptcy matters as provided in 28 U.S.C. § 157(b).

**B. Personal Injury or Wrongful Death Claims.** Any claim arising in or related to a case under Title 11 involving claims of personal injury or wrongful death shall be tried in the district court of the district in which the bankruptcy case is pending, or in the district court of the district in which the claim arose, as may be determined by the district judge assigned pursuant to D.C.COLO.LCivR 40.1.

**C. Withdrawal of Reference.** The automatic referral to bankruptcy judges provided in Section A. of this rule may be withdrawn by a district judge.

1. *Motion.* A motion for withdrawal of reference shall be filed with the clerk of the bankruptcy court in accordance with Bankruptcy Rule 5011 and Local Bankruptcy Rule 5011-1.

2. *Response.* Within 14 days after being served with a copy of a motion for withdrawal of reference, a party may file with the clerk of the bankruptcy court and serve on affected parties an objection to the motion and a designation of any additional portions of the record necessary for the district court's determination of the motion.

3. *Supplementation of Record.* The record may be supplemented by additional portions of the record as determined by the bankruptcy judge.

4. *Order of Referral to District Court.* The bankruptcy judge shall enter an order directing the clerk of the bankruptcy court to refer the motion and/or matter to the district court.

5. *Assignment.* The clerk of the district court shall assign the matter to a district court judge pursuant to D.C.COLO.LCivR 40.1.

**D. Proceeding Under 28 U.S.C. § 157(c)(1).** When a bankruptcy judge hears a proceeding under 28 U.S.C. § 157(c)(1) that is not a "core proceeding" as defined by 28 U.S.C. § 157(b)(2), the bankruptcy judge shall submit the proposed findings of fact and conclusions of law to the district judge assigned pursuant to D.C.COLO.LCivR 40.1. Copies of those recommendations shall be mailed by the bankruptcy judge to all parties, who shall have 14 days after the date of mailing of the recommendations (or such further time not to exceed 30 days as the bankruptcy judge may order) to file written objections. Objections lacking specificity as to factual findings or legal conclusions the objecting party claims to have been erroneously made and objections not timely filed may be summarily overruled. If no objection is filed, or if the parties consent in writing, the recommendations of the bankruptcy judge may be accepted by the district judge, and appropriate orders may be entered without further notice. Procedure for determining objections shall be as set forth in 28 U.S.C. § 157(c)(1).

**E. Filings.** The clerk of the bankruptcy court shall take in all pleadings in bankruptcy cases and related proceedings. Bankruptcy papers shall be filed with the bankruptcy court in accordance with the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules for the District of Colorado. Any bankruptcy papers filed with the clerk of the district court shall be transferred to the bankruptcy court.

**F. Post-judgment Matters.** The bankruptcy judges shall exercise jurisdiction over all post-judgment execution matters arising from a judgment or order entered by bankruptcy judges.

(Amended, effective December 1, 2011.)

# SECTION II. CRIMINAL RULES

## I. SCOPE, PURPOSE, AND CONSTRUCTION

### D.C.COLO.LCrR 1.1. SCOPE OF THE LOCAL RULES

**A. Title and Citation.** These rules shall be known as the Local Rules of Practice of the United States District Court for the District of Colorado-Criminal. These rules shall be cited as, D.C.COLO.LCrR Rule, Section, Subsection, and Paragraph (e.g., D.C.COLO.LCrR 57.1B.23.a.).

**B. Effective Date.** These rules became effective on December 1, 2012.

**C. Scope.** These rules apply in all criminal actions filed in the United States District Court for the District of Colorado.

**D. Relationship to Prior Rules.** Except as otherwise provided in D.C.COLO.LCrR 57.6, concerning standards of professional responsibility governing conduct of attorneys, these rules supersede all previous local rules.

**E. Numbering and Indexing.** These rules are numbered and indexed in accordance with the Judicial Conference Uniform Numbering System.

**F. Judicial Officer.** A judicial officer refers to a district judge or to a magistrate judge.

**G. Clerk.** Reference in these rules to the clerk refers to the Clerk of the Court or a deputy clerk, unless otherwise specified.

**H. Forms.** Forms are subject to modification without notice.

**I. Pilot Projects.** Upon appropriate notice, without amendment of the local rules of practice, the court may adopt and implement pilot programs or special projects by general order. The general order shall address:

1. the purpose of the pilot program or special project;
2. the term of the pilot program or special project;
3. the effect upon any local rule of practice; and
4. any requirement necessary to implement or facilitate the pilot program or special project.

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

### D.C.COLO.LCrR 1.2. FORMS

Any court approved form is found on the court's website - [www.cod.uscourts.gov](http://www.cod.uscourts.gov). A form may be modified by the court or a judicial officer at any time. A form modified by a judicial officer may be found under the judicial officer's procedures on the court's website.

(Adopted, effective December 1, 2012.)

## II. PRELIMINARY PROCEEDINGS

[No local rules]

## III. INDICTMENT AND INFORMATION

### D.C.COLO.LCrR 6.1. GRAND JURY

Grand jury supervision shall be assigned equally among the active district judges. Access to an indictment shall be restricted at Level 3 without the written order of a judicial

officer. Unless otherwise ordered by the court, the indictment shall be publicly available upon the first defendant's arrest or initial appearance.

(Amended, effective December 1, 2011.)

### **D.C.COLO.LCrR 7.1. INFORMATION SHEET**

A properly completed information sheet shall be given to the clerk at the commencement of a criminal action.

## **IV. ARRAIGNMENT AND PREPARATION FOR TRIAL**

### **D.C.COLO.LCrR 11.1. PLEAS**

**A. Written Notice.** Unless otherwise ordered, notice of disposition shall be filed no later than 14 days before the date set for the trial.

**B. Pleas Before District Judge.** A plea of guilty or nolo contendere in a felony case shall be made before the district judge assigned to the case.

**C. Plea Agreement.** A plea agreement shall be presented in writing in accordance with the form entitled "Plea Agreement" found at <http://www.cod.uscourts.gov/Forms.aspx> and signed by the attorney for the government, defendant's counsel, and the defendant.

The written stipulation of facts relevant to sentencing from the plea agreement shall be included in the presentence investigation report required by Fed. R. Crim. P. 32(b)(1). The attorney for the government shall deliver a copy of the plea agreement to the chambers of the assigned judicial officer and the Probation Office no later than 48 hours prior to the change of plea hearing. The 48 hours shall be calculated in accordance with Fed. R. Crim. P. 45(a).

**D. Statement by Defendant in Advance of Plea of Guilty.** A statement by defendant in advance of plea of guilty shall be presented in writing in accordance with the form entitled "Statement by Defendant in Advance of Plea of Guilty" found at <http://www.cod.uscourts.gov/Forms.aspx>, and signed by the defendant and defendant's counsel.

Defendant's counsel, or a pro se defendant, shall deliver the statement by defendant in advance of plea of guilty to the courtroom deputy in the courtroom before the change of plea hearing.

**E. Translation of Change of Plea Documents.** If a defendant requires an interpreter for a change of plea hearing:

1. defense counsel shall contact the deputy clerk designated as courtroom services specialist two weeks before the hearing to obtain the assistance of a designated interpreter in translating the plea agreement and the statement by defendant in advance of plea of guilty;

2. defense counsel shall coordinate with the designated interpreter to ensure that the plea agreement and the statement by defendant in advance of plea of guilty are translated, in writing, into the language of the defendant, furnished to defendant, and signed by defendant in advance of the hearing; and

3. a certificate that the written translation is a complete and correct interpretation shall be attached by the designated interpreter to the written translation of both the plea agreement and statement by defendant in advance of plea of guilty.

**F. Documents Tendered to Courtroom Deputy.** No later than the commencement of the change of plea hearing, the following documents shall be tendered to the courtroom deputy:

1. the original and a copy of both the plea agreement and statement in advance of plea of guilty; and

2. if applicable, the original and a copy of the written translation of both the plea agreement and statement in advance of plea of guilty.

(Amended, effective December 1, 2012.)



**D.C.COLO.LCrR 12.1.**  
**MOTIONS TO JOIN MOTIONS PROHIBITED**

**A.** No party may file a motion to join a motion filed by another party.

**B.** The government and each defendant shall file its, his, or her own motions. Each motion shall request specific relief and include a title that identifies the relief requested. In a motion, the party may indicate that the party approves, adopts, or may incorporate by reference any or all of the reasons stated, arguments advanced, and/or authorities cited by a party in another motion. The party shall identify the related motion of another party by providing the following information:

1. the name of the other party;
2. the precise title of the motion filed by the other party;
3. the document number assigned to the other motion by the court's Electronic Case Filing docketing system; and
4. the date the other motion was filed.

(Amended, effective December 1, 2012.)

**D.C. COLO.LCrR 12.4.**  
**DISCLOSURE STATEMENT**

**A. Who Must File.**

1. *Defendant.* Any nongovernmental party or other legal entity to a proceeding in a district court must file a statement identifying all its parent entities and listing any publicly held entity that owns ten percent or more of the party's stock.

2. *Organization Victim.* If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Section A.1. of this rule.

**B. Time for Filing; Supplemental Filing.**

1. A party must file the disclosure statement upon its first appearance, pleading, petition, motion, response, or other request addressed to the court.

2. A party must promptly file a supplemental statement upon any change in the information that the statement requires.

**D.C.COLO.LCrR 17.1.1.**  
**PRETRIAL CONFERENCE**

A magistrate judge shall conduct a discovery conference at the time of or within 14 days after the arraignment and direct counsel to obtain a motion date and trial date from the district judge assigned to the case.

(Amended, effective December 1, 2011.)

**V. VENUE**

[No local rules]

**VI. TRIAL**

**D.C.COLO.LCrR 24.1.**  
**COMMUNICATION WITH JURORS**

No party or attorney shall communicate with, or cause another to communicate with, a juror or prospective juror before, during, or after any trial without written authority signed by the judicial officer to whom the case is assigned for trial.

## **VII. JUDGMENT**

### **D.C.COLO.LCrR 26.1. HEARING AND TRIAL PROCEDURES**

Procedures pertaining to the hearing in or trial of a particular case will be established by the judicial officer trying the case. The procedures shall be in accordance with any written instructions of that judicial officer.

### **D.C.COLO.LCrR 26.2. ACCOMMODATIONS**

At least seven days prior to a hearing or trial, counsel or a pro se party shall notify the court of any necessary Americans with Disabilities Act accommodations.  
(Amended, effective December 1, 2011.)

### **D.C.COLO.LCrR 32.1. SENTENCING DOCUMENTS**

#### **A. Sentencing Statements.**

1. Within 30 days after a verdict of guilty is returned by a jury or the court, the attorney for the government shall file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.

2. Within 14 days after the government files its sentencing statement, a defendant may file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.

**B. Objections to Presentence Report.** Objections to a presentence report shall not be included in or combined with a motion for a sentence departure or a motion for a sentence variance.

**C. Motions for Departure or Variance.** A motion for departure or variance shall be filed not less than 14 days before sentencing. Any response shall be filed not less than seven days before sentencing.

**D. Restricted Access.** A motion for a sentence departure or a motion for a sentence variance may not be filed as a restricted document without leave of the sentencing court.  
(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

## **VIII. APPEAL**

[No local rules]

## **IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS**

[No local rules]

## **X. GENERAL PROVISIONS**

### **D.C.COLO.LCrR 44.1. APPEARANCES**

**A. Appearances.** An attorney appearing for a defendant in a criminal case shall file promptly an entry of appearance. Only pro se parties and members of the bar of this court as defined in D.C.COLO.LCrR 57.5, may appear or sign pleadings, motions, or other papers, or participate in a court hearing or deposition.

**B. Signatures and Signature Pages.** Facsimile signatures on documents filed with the court shall have the same legal effect as original signatures on documents filed with the court. If a facsimile signature page with the facsimile signature of a member of this court's

bar is attached to a pleading, motion, or other paper filed with the court, the member of this court's bar shall maintain the original signature page. At the direction of a judicial officer, the member of this court's bar may be required to file the original signature page.

### **D.C.COLO.LCrR 46.1.**

#### **COURT REGISTRY**

##### **A. Deposit of Funds in Registry**

Unless a statute requires the deposit of funds without leave of court, no money shall be sent to the court or its officers for deposit into the court's registry except pursuant to court order. On depositing the funds, the depositing person must identify in writing the order authorizing deposit by the relevant docket entry in the court's Electronic Case Filing system.

##### **B. Investment of Registry Funds**

No deposit into an interest-bearing account shall be permitted without court order. Unless otherwise ordered by the court, the Court Registry Investment System (CRIS) shall be the authorized investment mechanism.

##### **C. Registry Fee**

With regard to funds in an interest bearing account, registry fees will be deducted in accordance with 28 U.S.C. § 1914 and regulations promulgated thereunder.

##### **D. Disbursement of Registry Funds**

No funds in the registry shall be disbursed except by order of court. Any proposed court order to disburse funds must include the payee's full name, complete address and amount to be disbursed to that payee. If more than \$10.00 of interest is to be disbursed, the proposed order must be accompanied by a completed IRS Form W-9 (which shall be filed subject to restricted access). For disbursement of funds, the clerk must be provided in writing the order authorizing disbursement by reference to the relevant docket entry in the court's Electronic Case Filing system.

(Amended, effective December 1, 2011.)

### **D.C.COLO.LCrR 47.1.**

#### **PUBLIC ACCESS TO DOCUMENTS AND PROCEEDINGS**

**A. Policy.** The public shall have access to all documents filed with the court and all court proceedings, unless restricted by court order or as provided in Sections D or E of this rule.

**B. Motions to Restrict Access.** Any motion to restrict public access will be open to public inspection or as otherwise ordered. It shall identify the document or the proceeding for which restriction is sought. It shall be accompanied by a brief that will be filed as a restricted document (Level 1 or 2). The brief must:

1. Address the interest to be protected and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restricted access);

2. Identify a clearly defined and serious injury that would result if access is not restricted;

3. Explain why no alternative to restricted access is practicable or why only restricted access will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and

4. Identify the restriction level sought (i.e., Level 1 = access limited to the parties and the court; Level 2 = in a multi-defendant case access limited to the filing party, government and the court; Level 3 = access limited to the affected defendant, the filing party and the court; Level 4 = access limited to the court).

**C. Public Notice of Motions to Restrict Access; Objections.** Notice of the filing of such motion will be posted on the court's website on the court business day following the filing of the motion. Any person may file an objection to the motion to restrict access within three court business days after posting. Absent exigent circumstances, no ruling on a motion to restrict access will be made until the time for objection has passed. The absence of objection shall not, alone, result in the granting of the motion.



**D. Filing Restricted Documents.** Any document that is the subject of a motion to restrict access may be filed as a restricted document, and will be subject to restriction until the motion is determined by the court. If a document is filed as a restricted document without an accompanying motion to restrict access, it will retain a Level 1 restriction for fourteen days. If no motion to restrict access is filed within such time period, the access restriction will expire and the document will be open to public inspection.

**E. Presumptive Restriction.** The following documents will be filed using the presumptive restriction levels set forth below without the order of a judicial officer:

1. The following documents shall be filed with Level 2 access:
  - a. Presentence reports.
  - b. Probation or supervised release violation reports.
2. The following documents shall be filed with Level 3 access:
  - a. Unexecuted arrest warrants and supporting documents.
  - b. Unexecuted search warrants and supporting documents.
  - c. Unexecuted criminal and civil forfeiture seizure warrants and supporting documents.
  - d. Unexecuted bond revocation orders and supporting documents.
  - e. Unexecuted petitions for arrest warrants based upon petitions for revocation of probation or supervised release.
  - f. Pen register and trap/trace orders and supporting documents.
  - g. Orders and supporting documents regarding access to electronic communications.
  - h. Title III and clone pager orders and supporting documents.
  - i. Grand Jury, pre-indictment and other documents with restricted access pursuant to statute.
  - j. Applications, motions and orders made pursuant to the Criminal Justice Act.

With regard to items a - e of subpart 2, above, the access restriction will expire upon the filing of a document evidencing execution of the warrant or petition. With regard to item j of subpart 2, above, the access restriction will expire upon the entry of final judgment. All other items will remain subject to Level 3 access unless otherwise ordered.

3. The following documents shall be filed with Level 4 access:  
Pretrial services reports (bail reports).

(Amended, effective December 1, 2011; amended, effective December 1, 2012.)

**D.C.COLO.LCrR 47.2.**  
**[RESERVED]**

**D.C.COLO.LCrR 49.1.**  
**SERVICE AND FILING OF PLEADINGS AND PAPERS**

**A. Facsimile Filing.** A pleading or paper which is no longer than ten pages, including all attachments, may be filed with the clerk by means of facsimile at a telephone number that may be obtained from the court's web site or clerk's office. On receipt of a facsimile filing, the clerk will make the copies required under D.C.COLO.LCrR 49.3L. Facsimiles received by the clerk after 5:00 p.m. (Mountain Time) will be considered filed as of the next business day. Unless otherwise ordered by the court, a paper filed by facsimile shall be treated as an original for all court purposes.

**B. Facsimile Cover Sheet.** A pleading or paper filed with the clerk by facsimile must be accompanied by a facsimile cover sheet found at <http://www.cod.uscourts.gov/Forms.aspx> which includes the following:

1. the date of transmission;
2. the name, facsimile number, and telephone number of the attorney or pro se party making the transmission;
3. the case number, caption, and title of the pleading or paper;

4. the number of pages of the pleading or paper being transmitted including the facsimile cover sheet; and

5. the name of the magistrate judge, if the case has been referred to a magistrate judge.

**C. Confirmation of Facsimile Filing.** Confirmation that the clerk received a facsimile filing may be made by:

1. reviewing the docket entries, or

2. transmitting an additional copy of the first page of the pleading or paper and requesting on the facsimile cover sheet that the first page of the pleading or paper be file stamped by the clerk and returned to the attorney or pro se defendant via facsimile.

**D. Original Pleading or Paper.** If a facsimile copy is filed in lieu of the original pleading or paper, the attorney or pro se defendant shall maintain the original document. At the direction of a judicial officer, the transmitting party may be required to file the original document accompanied by a letter noting that the original document is being filed after transmission by facsimile.

**E. Signatures.** Signatures on pleadings or papers filed by facsimile shall have the same legal effect as original signatures on pleadings actually filed with the court.

**F. Certificate of Service.** Each paper, other than one filed ex parte, shall be accompanied by a certificate of service indicating the date it was served, the name and address of the person to whom it was sent, and the manner of service. Where service is by electronic means, the electronic mail address or facsimile number used shall be listed.

(Amended, effective December 1, 2012.)

#### **D.C.COLO.LCrR 49.2.**

### **SERVICE BY OTHER MEANS, INCLUDING ELECTRONIC MEANS**

**A. Electronic Case Filing Registration.** Registration with the court's Electronic Case Filing system shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Criminal Procedure.

**B. Form and Content of Consent.** A party's consent to accept service by other means, as authorized by Fed. R. Crim. P. 49(b), shall be expressly stated and filed in writing with the clerk. The consent shall include:

1. the persons to whom service should be made; and

2. the appropriate address or location for such service, as authorized by Fed. R. Crim. P. 49(b).

**C. Duration of Consent.** A party's consent shall remain effective for all service authorized by Fed. R. Crim. P. 49(b) until expressly revoked or until the representation of a party changes through entry, withdrawal, or substitution of counsel.

**D. Notice of Change of Electronic-Mail Address or Facsimile Number.** Within five days after any change of electronic-mail address or facsimile number of any attorney or pro se party that has consented to service by other means, including electronic means, notice of the new electronic-mail address or facsimile number shall be filed.

#### **D.C.COLO.LCrR 49.3.**

### **FORMAT AND COPIES OF PAPERS PRESENTED FOR FILING**

**A. Definition.** The term "papers" includes pleadings, motions, briefs, or other filings made pursuant to the Federal Rules of Criminal Procedure or these rules.

**B. Size.** All documents filed with the court shall be on 8 1/2- by 11-inch, white paper. Use of recycled paper is acceptable.

**C. Margins.** Margins shall be 1 1/2 inches at the top and 1 inch at the left, right, and bottom.

**D. Font.** Except in pro se cases or for good cause shown, all papers shall be typewritten using black ink and not less than 12-point font.

**E. Spacing.** All papers shall be double-spaced.

**F. Text.** Text shall be printed on one side of the page only.

**G. Legible.** All papers and signatures shall be legible.



**H. Exhibits.** Exhibits, other than documentary evidence in a different format, shall conform to this rule.

**I. First Page; Case Number.** The title of every paper shall reflect accurately its nature and the identity of the party on whose behalf it is filed. All papers filed in pending cases after commencement of the case shall bear the proper case number, including in sequence the case year, the notation of the case type, the chronological case number, the initials of the district judge assigned, or the initials of the magistrate judge assigned:

1. criminal case types shall be designated “cr” (for example 05-cr-00123-WYD);
2. criminal miscellaneous filings of papers case types shall be designated “y” (for example 05-y-00123-WYD);
3. magistrate judge case types shall be designated “mj” (for example 05-mj-00123-MJW);
4. petty offense case types shall be designated “po” (for example 05-po-00123-MJW);
5. search warrant case types shall be designated “sw” (for example 05-sw-00123-MJW).

When the case is commenced, the clerk will select and designate the type of case, the assigned district judge and the assigned magistrate judge. The parties will thereafter use that designation as the case number. For the initials of the judicial officers, see the list of Judicial Officers Initials found at <http://www.cod.uscourts.gov/Forms.aspx>.

**J. Caption.** The caption format shall be as set forth in <http://www.cod.uscourts.gov/Forms.aspx>. Defendants shall be listed in a caption by consecutive numbers with one defendant per line. The proper name of a party shall be in capital letters, and any identifying text shall be in upper and lower case immediately following the proper name. For example:

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. XOXOXO,
  2. XOXOXO, a/k/a XOXOXO and XOXOXO, and
  3. XOXOXO, INC., a Colorado corporation,
- Defendants.

**K. Signature Block.** The name, current mailing address, and telephone number of any attorney of record or pro se defendant filing a paper shall be typed in a signature block at the end of the paper. A post office box number will be accepted as a mailing address, but a street address also must be provided. An electronic-mail address is required unless the filer is allowed to file in paper format pursuant to exceptions enumerated in the Electronic Case Filing Procedures of the District of Colorado (Criminal Cases). A facsimile number is optional. A paper shall be legibly signed in the signature block by the attorney of record or pro se defendant filing the paper.

**L. Original Papers.** Except for papers filed by facsimile pursuant to D.C.COLO.LCrR 49.1A. and filings made electronically pursuant to D.C.COLO.LCrR 49.4A., an original paper shall be filed with the court.

**M. Notice of Change of Address, E-mail Address, or Telephone Number.** Within five days after any change of address, e-mail address (including any change of e-mail address to be used in the account maintenance link in ECF), or telephone number of any attorney or pro se party, notice of the new address, e-mail address, or telephone number shall be filed.

(Amended, effective December 1, 2012.)

#### D.C.COLO.LCrR 49.4. ELECTRONIC CASE FILING

**A. Electronic Filing.** Pursuant to Fed. R. Crim. P. 49, the court will permit papers to be filed, signed, and verified by electronic means. Parties filing by electronic means shall



comply with standards and procedures set forth in a manual entitled "Electronic Case Filing Procedures for the District of Colorado (Criminal Cases)." The current version of that manual shall be available in the clerk's office and shall be posted on the court's web site.

**B. Paper Filings.** Parties authorized or directed to file in paper format, pursuant to exceptions enumerated in the Electronic Case Filing Procedures for the District of Colorado (Criminal Cases), shall continue to file in accordance with all provisions of the local rules.

**C. Time.** Nothing in the Electronic Case Filing Procedures for the District of Colorado (Criminal Cases) alters the rules governing the computation of deadlines for filing and service of documents that are set forth at Fed. R. Crim. P. 45.

**D. Service.** Pursuant to Fed. R. Crim. P. 49, parties are authorized to make service through the court's transmission facilities.

### **D.C.COLO.LCrR 50.1. ASSIGNMENT OF CASES**

**A. Assignment in General.** Except as provided in this rule, criminal cases shall be assigned to judicial officers by random draw. Work parity shall be maintained among active district judges, provided that a majority of active district judges may adjust the assignment of cases to the Chief Judge as may be necessary for the performance of the duties of that office, and may, for good cause, approve special assignment or reassignment of cases among the judicial officers of the court. All other transfers of cases from one judicial officer to another shall be subject to the Chief Judge's approval.

**B. Random Draw by Computer.** The clerk shall maintain a computerized program to assure random and public assignment of new cases on an equal basis among the judicial officers. A senior judge may decline assignment of cases and, on written notice to the Chief Judge, limit participation in the random draw by a stated percentage.

#### **C. Special Assignments.**

1. On filing a new criminal case, the United States Attorney shall notify the clerk in writing when that defendant is involved in a pending civil forfeiture proceeding. The criminal case shall be assigned to the judicial officer to whom the civil case was assigned.

2. On filing a new criminal case, including new cases filed pursuant to 18 U.S.C. § 3605, Transfer of Jurisdiction Over a Probationer, and criminal cases transferred to the court pursuant to Fed. R. Crim. P. 20, the United States Attorney shall notify the clerk in writing when that defendant is currently serving, or has served, a sentence of probation or supervised release. The new criminal case shall be assigned to the district judge presiding in the case in which the previous sentence of probation or supervised release was imposed. In the event the defendant has had multiple cases before this court, the new case shall be reassigned to the judge who handled the oldest case.

**D. Recusal.** Recusal of a judicial officer shall be only by written order setting forth the reasons.

**E. Adjustments.** On recusal or special assignment of a case to a judge pursuant to this rule, the clerk shall adjust the computerized drawing program to maintain the equal assignment of cases among active district judges.

### **D.C.COLO.LCrR 55.1. CUSTODY OF FILES AND EXHIBITS**

Pleadings, other papers, and exhibits in court files shall not be removed from the clerk's office or the court's custody except by written court order.

### **D.C.COLO.LCrR 55.2. INSPECTION OF EVIDENCE**

Photographic negatives, tape recordings, contraband including drugs and narcotics, firearms, currency, negotiable instruments, computer disks or tapes, and other items

designated by a judicial officer, while in the clerk's custody, shall not be available for inspection by any person except while in the presence of and under the control of the clerk. The clerk may limit or preclude access and copying in order to preserve such evidence.

**D.C.COLO.LCrR 56.1.**  
**TIME AND PLACE OF FILING**

If filed electronically, all pleadings, motions, briefs, and other papers shall be filed not later than 11:59:59 p.m. (Mountain Time) on the day required, unless otherwise directed by a judicial officer. If filed otherwise, such pleadings, motions, briefs, and other papers shall be filed during the business hours of the office of the clerk from 8:00 a.m. to 5:00 p.m. (Mountain Time) Monday through Friday.

**D.C.COLO.LCrR 57.1.**  
**GENERAL AUTHORITY AND DUTIES OF MAGISTRATE JUDGES**

**A. General Authority.** Except as restricted by these rules, magistrate judges may exercise all powers and duties authorized by federal statutes, regulations, and the Federal Rules of Criminal Procedure.

**B. Duties.** Each magistrate judge may:

1. issue orders authorizing the installation and use of a pen register or a trap and trace device pursuant to 18 U.S.C. §§ 3122-23, and issue related orders directing the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device;
2. issue search warrants;
3. accept criminal complaints and issue arrest warrants or summonses;
4. accept waivers of indictment pursuant to Fed. R. Crim. P. 7(b);
5. receive the return of indictments by the grand jury and issue arrest warrants or summonses when necessary for the defendants named in the indictments;
6. enter orders restricting and granting access to an indictment;
7. conduct preliminary proceedings incident to transfer cases pursuant to Fed. R. Crim. P. 20;
8. exercise powers and duties necessary for extraditing fugitives pursuant to 18 U.S.C. §§ 3181-96;
9. conduct hearings and issue orders under the Bail Reform Act of 1984;
10. enter an order to forfeit bail when a defendant breaches his or her bail conditions by failing to appear in proceedings scheduled before the magistrate judge;
11. set bail for material witnesses;
12. schedule and conduct arraignments on indictments and informations by taking and entering not guilty pleas and making findings regarding time limits required by the Speedy Trial Act;
13. direct the United States marshal to arrange for payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances;
14. issue subpoenas and writs of habeas corpus ad testificandum or other orders necessary to obtain the presence of parties, witnesses, or evidence necessary for proceedings;
15. try petty offense or misdemeanor cases in accordance with the law;
16. conduct a jury trial in any petty offense or misdemeanor case as authorized by law;
17. direct the probation office to conduct a presentence investigation in any misdemeanor case;
18. perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
19. appoint counsel for persons subject to revocation of probation, parole, or supervised release (in which case preference shall be given to previously appointed counsel if such attorney still is available and willing to serve); for persons in custody



as a material witness; persons seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or for any person for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which the person faces loss of liberty, any federal law requires the appointment of counsel;

20. conduct preliminary hearings for the purpose of determining whether there is probable cause to hold a probationer or a person on supervised release for a revocation hearing;

21. exercise contempt authority as authorized by law;

22. preside over petty offense and misdemeanor cases that involve juvenile defendants as authorized by law;

23. act on post judgment matters;

a. to issue writs;

b. to issue orders directing funds to be paid into or disbursed from the registry of the court;

c. to hold hearings and make recommendations to the district judge on substantive issues including the liability of a party under a writ of garnishment or execution; and

d. to perform duties set forth in chapter 176 of Title 28 United States Code, as assigned by the court pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008.

(Amended, effective December 1, 2011.)

#### **D.C.COLO.LCrR 57.2.**

### **EX PARTE COMMUNICATION WITH JUDICIAL OFFICERS**

No attorney or party to any proceeding shall send letters, pleadings, or other papers or copies directly to a judicial officer. Unless otherwise instructed, all matters to be called to a judicial officer's attention shall be submitted through the clerk with copies served on all other parties or their attorneys. No attorney or party shall contact orally a judicial officer regarding any case by telephone, in person, or through any other means, unless all other parties in the matter, or their attorneys, are present or on the telephone.

#### **D.C.COLO.LCrR 57.3.**

### **CAMERAS AND RECORDING DEVICES**

**A. Permissible Devices.** After clearing security, an electronic device, including, but not limited to, a cellular telephone, a smartphone, a laptop computer, or a personal data assistant (PDA), regardless of the technology used or the name by which the device is marketed, may be brought into any public area in the United States Courthouse or any location in which court business and proceedings are conducted.

**B. Impermissible Uses of Permissible Devices.** No person shall use a permissible device defined in Section A to take photographs or to make audio or video recordings in any public area in the United States Courthouse or any other location in which court business and proceedings are conducted. No person shall use a permissible device defined in Section A to take photographs or to make audio or video recordings in any courtroom or chambers except as authorized by the judicial officer having direct control of that space.

(Amended, effective December 1, 2011.)

#### **D.C.COLO.LCrR 57.4.**

### **SECURITY**

**A. Procedures.** All persons entering a building where court is being held shall be subject to security procedures provided for that building.

All briefcases, purses, parcels, bags, backpacks, and other items shall be passed through X-ray scanners and shall be subject to search. This rule shall apply at such other places as a judicial officer may direct.



Failure to obey this rule shall be grounds for refusing admission to the buildings where court is being held and may subject the offender to detention, arrest, and prosecution as provided by law, or to a contempt proceeding.

**B. Identification or Information.** On request of a United States marshal, court security officer, federal protective service officer, or court official, anyone within or seeking entry to any court facility shall produce identification and state the nature of his or her business at court. Failure to provide identification or information shall be grounds for removal or exclusion from the facility.

**C. Purpose.** This rule and these procedures are necessary in the interest of public safety and to maintain orderly court procedures.

### **D.C.COLO.LCrR 57.5. THE BAR OF THE COURT**

**A. Applicant Information.** An applicant for admission to the bar of this court must be a person licensed by the highest court of a state, federal territory, or the District of Columbia, be on active status in a state, federal territory or the District of Columbia, and be a member of the bar in good standing in all courts and jurisdictions where he or she has been admitted. Each applicant for admission shall complete an approved form provided by the clerk. Each applicant shall pay to the clerk the fee prescribed by the court.

**B. Entry of Appearance.** An attorney's entry of appearance by signing a pleading, motion, or other paper does not constitute entry of appearance by that attorney's firm.

**C. Consent to Jurisdiction; Familiarity With Local Rules.** An attorney who applies for admission to the bar of this court:

1. consents to this court's exercise of disciplinary jurisdiction over any alleged misconduct, and
2. certifies familiarity with the local rules of this court.

**D. Withdrawal of Appearance.** An attorney who has appeared in a case may seek to withdraw on motion showing good cause. Withdrawal shall be effective only on court order entered after service of the notice of withdrawal on all counsel of record and on the withdrawing attorney's client. A motion to withdraw must state the reasons for withdrawal unless the statement would violate the rules of professional conduct. Notice to the attorney's client must include the warning that the client personally is responsible for complying with all court orders and time limitations established by any applicable rules. Where the withdrawing attorney's client is a corporation, partnership, or other legal entity, the notice shall state that such entity cannot appear without counsel admitted to practice before this court, and absent prompt appearance of substitute counsel, pleadings, motions, and other papers may be stricken, and default judgment or other sanctions may be imposed against the entity.

**E. Member in Good Standing.** An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. "In good standing" means not suspended or disbarred by any court for any reason. An attorney whose suspension or disbarment has been stayed by order of the disciplining court prior to the effective date of the suspension or disbarment remains in good standing. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. On notice to this court of lack of good standing from the suspending or disbarring jurisdiction, or otherwise, the clerk of this court shall make a notation in the court record of such lack of good standing.

1. *Self-Reporting Requirements.* Whenever a member of the bar of this court has been suspended or disbarred for any reason by any court, including when the suspension is stayed, the attorney shall, within ten days of the date the disciplinary order enters, give written notice to the clerk of this court of the terms of discipline, the name and address of the court imposing the discipline, and the effective date of that court's action.

2. *Separate Violation.* Failure to self-report or to cease practicing before the bar of this court as required by this rule are themselves separate causes for disciplinary action, except that failure to self-report administrative suspensions for failure to pay

an annual registration fee or to comply with mandatory continuing legal education requirements shall not be cause for further disciplinary action by this court.

3. *Reinstatement or Readmission.* Reinstatement following administrative suspension for failure to pay an annual fee or to comply with mandatory continuing legal education requirements shall be automatic upon receipt by this court of written proof of reinstatement by the original suspending jurisdiction. Application for reinstatement or readmission following suspension or disbarment from practice as a member of the bar of this court for any other reason shall be made in accordance with the terms of D.C.COLO.LCrR 57.7I.

**F. Relief From Rule of Good Standing.** It is presumed that discipline by another court against a member of this court's bar is appropriate. In order to obtain relief, the attorney so disciplined has the burden to establish, by clear and convincing evidence, that:

1. the procedure resulting in discipline by the court was so lacking in notice or opportunity to be heard as to deny due process;

2. application of D.C.COLO.LCrR 57.5E. would result in grave injustice; or

3. the kind of misconduct established has been held by this court to warrant substantially less severe discipline. Applications under this section shall be filed with or referred to the Committee on Conduct, which shall proceed in accordance with the provisions of D.C.COLO.LCrR 57.7D.

(Amended, effective December 1, 2012.)

### D.C.COLO.LCrR 57.6.

#### STANDARDS OF PROFESSIONAL RESPONSIBILITY

Except as otherwise provided by Administrative Order, the Colorado Rules of Professional Conduct adopted by the Colorado Supreme Court on April 12, 2007, and effective January 1, 2008, found at <http://www.cod.uscourts.gov/Forms.aspx> are adopted as standards of professional responsibility applicable in this court.

(Amended, effective December 1, 2012.)

### D.C.COLO.LCrR 57.7.

#### ATTORNEY DISCIPLINE

**A. Disciplinary Panel.** The Chief Judge shall appoint a panel of three district judges to constitute the Disciplinary Panel (the "Panel"). The Panel shall have jurisdiction over all judicial proceedings involving disbarment, suspension, censure, or other lawyer discipline. The Chief Judge at any time may designate additional judges to serve as alternates on the Panel.

**B. Committee on Conduct.** The court has established a standing Committee on Conduct (the "Committee") consisting of 12 members of this court's bar, each appointed for three years and until his or her successor is appointed. Any member appointed to fill a vacancy shall serve the unexpired term of his or her predecessor. Where a member holds over after expiration of the term for which appointed, the time of additional service shall be deemed part of the successor member's term. The court shall designate a chairperson of the Committee and a vice-chairperson who shall act during the chairperson's absence or disability. Members of the Committee shall serve without compensation, but, insofar as possible, their necessary expenses shall be paid by the clerk from the fund in which admission and annual registration fees paid by members of the bar are deposited. No member of the Committee shall serve more than two consecutive terms.

**C. Duties of the Committee.** The Committee shall receive, investigate, consider, and act upon complaints against members of the bar, applications for reinstatement or readmission, allegations that a member of this court's bar is incapable of practicing law due to physical or mental disability or substance abuse, and other similar matters concerning attorneys. The Committee chairperson shall appoint one or more members to present and prosecute charges and to prepare and present orders and judgments as directed by the Panel. The Committee is authorized and directed to report its findings concerning any disciplinary action to the grievance committee of any other bar or court of which the attorney in question may be a member. Additionally, the Committee is authorized to reveal



such information to any other court-authorized grievance body as the Committee deems appropriate and consistent with the objectives of this rule. The Committee also may perform any additional duties implied by these rules or assigned by order of the Panel. All requests for investigation submitted to the court or Committee and all complaints filed with the Committee shall be privileged, and no lawsuit may be predicated thereon. Persons performing official duties under this rule, including but not limited to members of the Committee, staff, and members of the bar or others working under the Committee's direction, shall be immune from suit for all acts and omissions occurring in the course of their official duties. All proceedings of the Committee shall be confidential.

**D. Complaints.** Any complaint against a member of this court's bar for any conduct which may justify any disciplinary action (not limited to suspension or disbarment) shall be filed in writing under oath, except that complaints filed by a judicial officer of this court need not be under oath. Complaints shall be filed with or referred to the Committee. The Committee shall admonish all persons concerned with any complaint, investigation, or inquiry that absolute confidentiality must be maintained and that violation of this rule will be deemed contempt of this court.

**E. Investigation of Complaints.** When a complaint is received, it shall be referred by the chairperson of the Committee to a Subcommittee consisting of three Committee members designated by the chairperson who shall appoint one of them as Subcommittee chairperson. The chairperson or vice-chairperson of the Committee may be designated as a member of a Subcommittee.

1. *Service of Complaint and Answer.* The Subcommittee shall investigate complaints referred to it by the chairperson of the Committee. A copy of the complaint shall be served on the member of the bar against whom the complaint has been made (the "respondent") by certified mail, return receipt requested, addressed to his or her most current address on file with the clerk. No answer shall be required unless specifically requested of the respondent by the Subcommittee investigating the complaint. If an answer is requested by the Subcommittee, the respondent shall file an answer under oath with the Subcommittee within 20 days of the date of the request or such later date as agreed upon by a majority of the Subcommittee.

2. *Hearings, Witnesses, and Documents.* A Subcommittee may hold hearings upon reasonable notice to the complainant and respondent. The chairperson of the Subcommittee conducting the inquiry shall serve as a master with authority to order issuance of subpoenas commanding the presence of witnesses and/or production of designated books, papers, documents, or other tangibles at the times and places stated in the subpoena. The Subcommittee chairperson, as master, is authorized to administer oaths. The name of any witness who fails or refuses to attend or testify under oath may be certified to the Panel, which may initiate contempt proceedings and impose appropriate punishment.

**F. Resolution of the Complaint by the Committee on Conduct.** On completion of its investigation, the Subcommittee shall report its recommendations to the full Committee. The Committee may, by a vote of a majority of the Committee in attendance, instruct the Subcommittee in any one of the following ways:

1. *Dismissal of the Complaint.* If the Committee concludes that the complaint is without merit or other grounds justify its dismissal (e.g., the claims are best handled in a different forum), the Committee shall instruct the Subcommittee to prepare a letter so advising the complainant and the respondent, to be signed by the chairperson or vice-chairperson of the Committee.

2. *Letter of Admonition.* If the Committee concludes, based on the report of the Subcommittee, that the misconduct or, in the case of alleged disability or substance abuse, the cause for concern, is sufficiently significant that the complaint should not be dismissed as without merit, but may not warrant submitting charges to the Panel, the Committee may issue a private letter of admonition to the respondent. The complainant shall be notified that the letter of admonition was issued but shall not be provided with a copy of the letter of admonition. Neither the fact that the letter of admonition was issued nor its content otherwise shall be disclosed by the Committee. An attorney receiving a letter of admonition shall be advised of the right to request in



writing, within 20 days after receiving the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the admonition is based. On timely filing of such a request, the letter of admonition shall be vacated and the Subcommittee shall proceed to prepare charges in accordance with the formal procedures provided in these rules.

3. *Submission of Charges to the Court.* The Committee may instruct the Subcommittee to prepare charges and submit them to the Panel or, with or without preparing charges, may refer the matter to Colorado Attorney Regulation Counsel or another court-authorized grievance body. If charges are prepared and submitted to the Panel, and thereafter the Panel orders the charges filed, the clerk shall file them and forthwith issue a summons commanding the respondent to answer. Except as hereinafter provided, the summons and a copy of the charges shall be served by a United States marshal. A respondent who cannot be served in Colorado may be served by filing a copy of the summons and charges with the clerk, who shall in turn send a copy of the summons and charges by certified mail, return receipt requested, to the last office address the respondent filed with the clerk. The respondent shall answer the charges within 30 days from the date of service. Absent a timely answer, the charges may be taken as confessed, and the Panel may conduct further proceedings, which may be *ex parte* as the Panel deems appropriate and may enter judgment against the respondent without hearing or further notice to the respondent.

**G. Disciplinary Panel Hearings and Orders.** A respondent against whom charges have been filed shall be entitled to be represented by counsel, at his or her own expense unless indigent. When the respondent has filed an answer, an evidentiary hearing shall be scheduled by the Panel. The Panel may ask the chairperson of the Committee to appoint one or more members of the Committee to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee in prosecuting the charges. If the charges are sustained by clear and convincing evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent. A respondent who is suspended or disbarred shall be enjoined from practicing law before this court and the judgment shall so recite. Any violation of the judgment shall be deemed a contempt of court.

**H. Rule Not to Deprive Court of Inherent Powers.** Nothing herein stated shall be deemed to negate or diminish this court's inherent disciplinary powers.

**I. Application for Reinstatement or Readmission.**

1. *General Procedure.* An attorney who has been suspended or disbarred may apply for reinstatement or readmission at the end of the disciplinary period. Each applicant for readmission or reinstatement shall complete an approved form provided by the clerk. Reinstatement or readmission is neither automatic nor a matter of right. Every application for reinstatement or readmission shall be investigated by one or more members of the Committee appointed by the Committee's chairperson. Following investigation, the Committee shall prepare a recommendation on the application. The recommendation and supporting documents shall be submitted to the Panel for decision. Reinstatement or readmission may be subject to conditions such as monitoring, reporting, testing, and education.

2. *Relationship to D.C.COLO.LCivR 83.3E. and D.C.COLO.LCrR 57.5E.* Suspension or disbarment of an attorney by any court may result in suspension or disbarment in a court other than the original disciplining court. An attorney who has been reinstated or readmitted by the original disciplining court but who remains suspended or disbarred in a court other than the original disciplining court or this court solely for the same conduct as that at issue in the original disciplining court may apply for reinstatement or readmission pursuant to D.C.COLO.LCrR 57.51.1 and is not subject to D.C.COLO.LCivR 83.3E. and D.C.COLO.LCrR 57.5E. requiring attorneys to be in good standing in all courts where admitted in order to be or remain admitted to the bar of this court.

**J. Effect of Conviction or Resignation from Another Bar While Under Investigation, and Duty to Report Pendency of Criminal Offenses.**

1. *Attorney Subject to a Criminal Conviction.* Any member of this court's bar who is convicted of a crime punishable by a term of imprisonment of more than one

year, shall, within 10 days of the conviction, give written notice to the clerk of this court of the conviction including the terms of the conviction, the court entering the conviction and the date of conviction. On notice to the court by the attorney or otherwise, the convicted attorney shall be suspended from practicing law in this court. On the conviction becoming final with no further right of appeal, the Panel shall disbar the attorney from practicing as a member of the bar of this court. For purposes of this rule, "conviction" shall include any ultimate finding of fact in a criminal proceedings that the individual is guilty of a crime punishable by a term of imprisonment of more than one year, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of nolo contendere, and irrespective of whether the entry of judgment or imposition of sentence is suspended or deferred by the court.

2. *Attorney Under Investigation Resigning from Bar of Another Court.* Any member of this court's bar who resigns from the bar of any other federal or state court while an investigation into allegations of misconduct is pending shall, within 10 days of resigning, give written notice of such resignation to the clerk of this court. On receipt of notice of resignation from the attorney or otherwise, the Panel shall disbar the attorney from practicing as a member of the bar of this court.

3. *Duty of Attorney to Notify Court of Pendency of Criminal Charges.* Any member of this court's bar who is charged in any court with a criminal offense that may subject the attorney to discipline in this court shall so notify the clerk in writing within 10 days after the charge is filed.

#### **K. Mental or Physical Incompetence or Disability, or Substance Abuse.**

1. *Declaration of Mental Incompetence.* On receiving proof that a member of this court's bar judicially has been declared incompetent or involuntarily committed to a mental hospital, the Panel may order that the attorney be suspended from practicing law immediately and indefinitely until further order. A copy of the order shall be served upon the attorney, his or her guardian, and the director of the mental hospital.

2. *Role of the Committee on Conduct.* In matters involving an allegation that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Subcommittee assigned by the Chair of the Committee may take or direct whatever action it deems appropriate to determine whether the attorney is disabled or is adversely affected by substance abuse, including examination by such experts the Subcommittee shall designate. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall result in certification of the name of the attorney to the Panel, which may initiate contempt proceedings and impose appropriate punishment. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Committee for consideration along with all other evidence. If the Committee determines that the attorney is incapable of practicing law, the Committee shall petition the Panel for an order of suspension. As an alternative to examination an attorney may elect to go on disability inactive status, and the Committee shall advise the attorney of this option prior to ordering examination. Any attorney who makes such an election shall be required to apply for reinstatement pursuant to D.C.COLO.LCrR 57.7I. and 57.7K.5. before practicing again in this court.

3. *Role of the Disciplinary Panel.* On petition by the Committee suggesting that a member of this court's bar is incapable of practicing law because of mental or physical disability or substance abuse, the Panel may take or direct whatever action it deems appropriate to determine whether the attorney is disabled, including examination by medical experts the Panel shall designate if no such examination had been ordered previously by the Committee or if the Panel desires further examination. The cost of such examination shall be borne by the court. Failure or refusal to submit to examination shall be prima facie evidence of disability. Any attorney who submits to examination may obtain a second opinion from expert(s) of his or her choice at his or her sole expense and may submit the results of such additional examination(s) to the Panel for consideration along with all other evidence. If the Panel concludes from the evidence that the attorney is incapable of practicing law competently, it shall order



him or her suspended until further order. Prior to ordering suspension the Panel may, in its sole discretion, offer the attorney an opportunity to go on disability inactive status voluntarily. The Panel may provide respondent notice of the proceedings and may appoint an attorney to represent a respondent who is without representation. Any attorney who elects disability inactive status or is suspended because of mental or physical disability or substance abuse must apply for reinstatement pursuant to D.C.COLO.LCrR 57.7I. and 57.7K.5. before practicing again in this court.

4. *Claim of Disability During Disciplinary Proceedings.* If during a disciplinary proceeding the respondent attorney asserts a disability by reason of mental or physical illness or substance abuse, rendering adequate defense impossible, the Panel shall order the respondent suspended from practicing law until there can be a determination pursuant to D.C.COLO.LCrR 57.7K.2. and 3. of his or her capacity to practice law.

5. *Attorney Placed on Disability Inactive Status by Other Courts.* A member of this court's bar who is placed on disability inactive status by any state or federal court is prohibited from practicing before this court during such status. Reinstatement upon termination of disability inactive status shall be in accordance with D.C.COLO.LCrR 57.7K.5. through K.9.

6. *Reinstatement After Disability Inactive Status or Suspension Because of Disability.*

a. An attorney who has elected to go on disability inactive status or who has been suspended for mental or physical disability or substance abuse may apply to the Panel for reinstatement not more than once a year, or more frequently if the Panel so directs. The application shall be granted upon a showing by clear and convincing evidence that the attorney no longer is disabled and is fit to practice law. The Panel, or the Committee if the Panel chooses to delegate initial consideration of the application for reinstatement to the Committee pursuant to D.C.COLO.LCrR 57.7I., may take or direct such action as it deems appropriate to determine whether the attorney's disability has been remedied, including examination by such medical experts as the Panel or Committee may designate. The Panel or Committee may direct that any examination expenses be paid by the attorney.

b. An attorney suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital, who thereafter judicially is declared competent, may apply for reinstatement upon proper proof of the latter declaration, and reinstatement may be subject to such conditions as the Panel may require.

7. *Evidentiary Hearing.* If the Panel holds an evidentiary hearing to determine whether an attorney is disabled or to consider an application for reinstatement, the chairperson of the Committee shall appoint one or more members to offer evidence, examine and cross-examine witnesses, and otherwise represent the Committee.

8. *Waiver of Physician/Patient Privilege.* Filing an application for reinstatement constitutes waiver of any physician-patient privilege with respect to any related treatment of the attorney. The attorney shall disclose the name and address of every psychiatrist, psychologist, physician, hospital, or other health-care provider that has examined or treated him or her since three (3) years prior to his or her suspension and shall furnish the Panel or the Committee written consent to obtain from these sources information and records requested by the Panel or the Committee or its designated medical experts.

9. *Orders Transferring.* Orders transferring attorneys to or from disability inactive status are matters of public record.

**L. Complaint against Sitting Member of the Committee on Conduct.** If a complaint is lodged against a sitting member of the Committee, in lieu of investigation by any other sitting member of the Committee the court shall appoint a Special Subcommittee consisting of three members of the bar of the court who in the past have served on the Committee but not as co-members with the member against whom the complaint is lodged, or such other members of the bar of the court as the court may choose. The court shall designate one of the three as chair of the Special Subcommittee. The Special Subcommit-



tee shall follow the procedures set out in D.C.COLO.LCrR 57.7E., F., and G., with the exception that the Special Subcommittee shall work directly with the Panel rather than the full Committee.

**M. Costs.**

1. *Disciplinary Proceedings.* In all cases where discipline is imposed by the Disciplinary Panel, it may assess against the respondent all or part of the costs incurred in connection with the disciplinary proceedings.

2. *Reinstatement and Readmission Proceedings.* An attorney who petitions for reinstatement from a suspension or readmission after disbarment shall bear the cost of such proceedings.

3. *Disability Proceedings.* The Disciplinary Panel may order an attorney to bear the cost of all or any part of the disability proceedings, including the cost of any examinations ordered.

(Amended Nov. 17, 2010, effective Dec. 1, 2010; amended, effective December 1, 2012.)

**D.C.COLO.LCrR 58.1.**

**FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE AND NOTICE OF CONVICTION**

**A. Scheduled Offenses; Collateral.** For certain scheduled offenses committed within the jurisdiction of this court, collateral may be posted in the scheduled amount set by the court. The collateral schedule for assimilated state-law offenses shall be the same as set forth by the statutes or regulations of the state unless modified by order of a judicial officer.

**B. Petty Offenses; Collateral.** With respect to any petty offense, a judicial officer shall have the authority to specify a collateral forfeiture amount different from that set out in this rule so long as an attorney or other representative of the government consents.

**C. Forfeiture Amount; Payment.** The collateral forfeiture amount set by a judicial officer pursuant to this section shall not be less than the minimum nor greater than the maximum fine that could be imposed upon conviction for violation of the particular regulation. Collateral may be posted by mail. Payment is authorized by cash, check, money order, draft, or court-approved credit card.

**D. Forfeiture.** If a defendant fails to appear before a judicial officer after posting collateral, the collateral shall be forfeited to the United States, and that forfeiture shall be accepted in lieu of appearance and shall terminate the proceeding without entry of judgment.

**E. Increase in Amount of Collateral.** If a defendant fails to post collateral and fails to appear before a judicial officer, a judicial officer may increase the amount of collateral. The increased amount of collateral shall not exceed double the maximum fine which could be imposed upon conviction.

**F. Forfeiture Not Permitted; Appearance Required.** Notwithstanding Section D. above, forfeiture of collateral will not be permitted, and the defendant is required to appear before a judicial officer in person or by counsel for:

1. an offense arising from an accident causing personal injury or death;
2. operation of a motor vehicle while impaired by or under the influence of alcohol or a drug or controlled substance as defined by federal or state statutes;
3. driving while a driver's license is suspended, denied, or revoked;
4. reckless driving;
5. any offense where appearance is required by state or federal statute or regulation;
6. illegal use or possession of a weapon; and
7. assault or crime of violence.

**G. Notice of Conviction.** When the defendant is convicted of a motor-vehicle offense that requires a mandatory appearance, the clerk shall send notice of that conviction to the appropriate state agency concerned with motor-vehicle violations.

# SECTION III. AP RULES

## I. SCOPE, PURPOSE, AND CONSTRUCTION

### D.C.COLO.LAPR 1.1. SCOPE OF THE LOCAL RULES

**A. Title and Citation.** These rules shall be known as the Local Rules of Practice of the United States District Court for the District of Colorado – AP Rules. These rules shall be cited as D.C.COLO.LAPR Rule, Section, and Subsection (e.g. D.C.COLO.LAPR 3.1B.3.a).

**B. Effective Date.** These rules became effective on December 1, 2012.

**C. Scope.** These rules apply to pre-merits management and briefing in a social security appeal, a case commenced or reviewed under 5 U.S.C. § 706 concerning an action or final decision of an administrative agency, board, commission or officer, or a bankruptcy appeal (“AP Case”).

**D. Numbering and Indexing.** These rules are numbered and indexed in accordance with the Judicial Conference Uniform Numbering System.

**E. Forms.** Forms are subject to modification without notice.

**F. Pilot Projects.** Upon appropriate notice, without amendment of the local rules of practice, the court may adopt and implement pilot programs or special projects by general order. The general order shall address:

1. the purpose of the pilot program or special project;
2. the term of the pilot program or special project;
3. the effect upon any local rule of practice; and
4. any requirement necessary to implement or facilitate the pilot program or special project.

(Adopted, effective December 1, 2011; amended, effective December 1, 2012.)

### D.C.COLO.LAPR 1.2. FORMS

Any court approved form is found on the court’s website - [www.cod.uscourts.gov](http://www.cod.uscourts.gov). A form may be modified by the court or a judicial officer at any time. A form modified by a judicial officer may be found under the judicial officer’s procedures on the court’s website. (Adopted, effective December 1, 2012.)

## II. COMMENCEMENT OF ACTION, FORM OF PLEADING, SERVICE OF PROCESS, AND ASSIGNMENT OF AP CASES

### D.C.COLO.LAPR 3.1. CIVIL COVER SHEET

A properly completed Civil Cover Sheet found at <http://www.cod.uscourts.gov/Forms.aspx> shall be filed at the commencement of every AP Case. The filing party shall add the phrase “AP docket” to the Brief Description field in Section VI of the Civil Cover Sheet regarding Cause of Action.

(Adopted, effective December 1, 2011; amended, effective December 1, 2012.)

### D.C.COLO.LAPR 10.2. COMMENCEMENT OF ACTION AND FORM OF PLEADING

**A. Social Security Appeals.** Review of a decision of the Commissioner of Social Security is commenced by filing a “Complaint and Petition for Review” which shall identify the specific order or decision for which review is sought and the date of issuance.

**B. Bankruptcy Appeals.** Appeals to the United States District Court for the District of Colorado from the Bankruptcy Court must be commenced and administered as prescribed in Part VIII of the Federal Rules of Bankruptcy Procedure 8001-8020.

**C. Administrative Appeals/Actions for Review of Final Agency Orders, Decisions, or Rulemaking.** Review of an order, decision, rulemaking, or other final action of an administrative agency pursuant to an agency's establishing statute or the Administrative Procedure Act is commenced by filing a properly denominated complaint or petition for relief as specified by the statute under which relief is requested. The complaint or petition for relief shall include factual allegations relating to the grounds on which the agency action is being challenged and the legal basis for plaintiff/petitioner's entitlement to relief.

(Adopted, effective December 1, 2011.)

### **D.C.COLO.LAPR 10.3. AP DOCKET**

**Opening an AP Case.** On proper commencement of any AP case under Section A, B, or C of D.C.COLO.LAPR 10.2, the clerk will open a case and assign a case number without random selection to a district judge in accordance with D.C.COLO.LCivR 40.1D. The case number shall bear the initials "AP" to identify the case as an appeal.

(Adopted, effective December 1, 2011.)

## **III. THE RECORD, PRE-MERITS BRIEFING AND MOTIONS PRACTICE**

### **D.C.COLO.LAPR 16.1. AP CASE MANAGEMENT**

**A. Joint Case Management Plan.** A scheduling conference pursuant to D.C.COLO.LCivR 16.1 will not be conducted. In all AP cases, except bankruptcy appeals, the parties will be directed to file a Joint Case Management Plan (JCMP). The form of JCMP for social security appeals is found at <http://www.cod.uscourts.gov/Forms.aspx>. The form of JCMP for review of agency action in other AP cases, including environmental cases, is found at <http://www.cod.uscourts.gov/Forms.aspx>.

**B. Motions for summary judgment** shall not be filed.

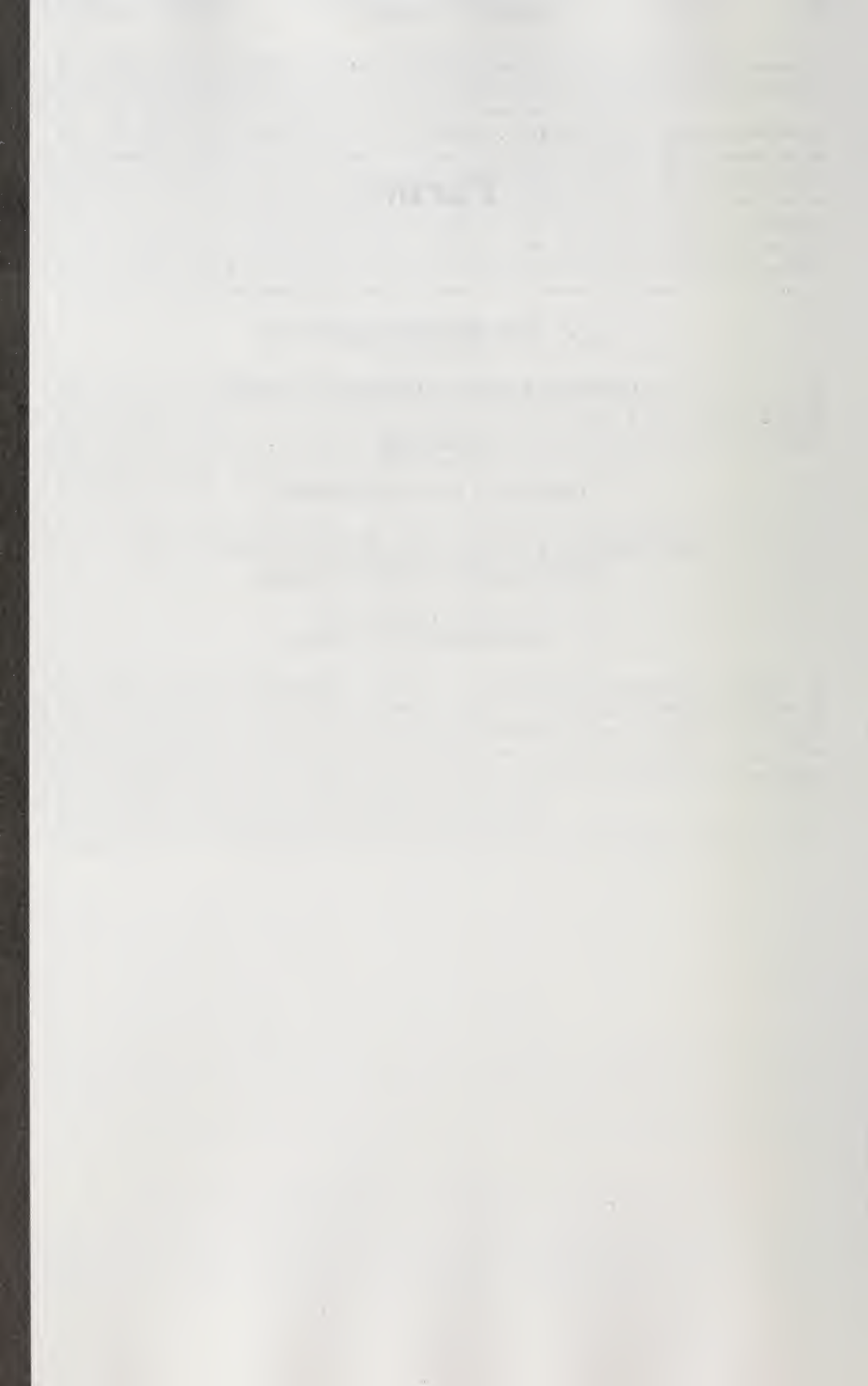
(Adopted, effective December 1, 2011; amended, effective December 1, 2012.)



# Forms

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LOCAL RULES OF PRACTICE  
UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLORADO



## FORMS

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Civil Cover Sheet.

Supplemental Civil Cover Sheet for Notices of Removal.

Schedule of Fees.

Facsimile Cover Sheet.

Case Caption (Civil).

Instructions for Preparation of Scheduling Order.

Appendix F.1. Civil Scheduling Order.

Appendix F.2. Civil Case Scheduling Order in an ERISA Action.

Appendix F.3. Joint Case Management Plan for Social Security Cases.

Joint Case Management Plan for Petitions for Review of Agency Action in [Environmental] Cases.

Instructions for Preparation of Final Pretrial Order.

Information for Temporary Restraining Order.

Plea Agreement.

Convenio para Aceptación de Culpabilidad.

Statement by Defendant in Advance of Plea of Guilty.

Declaración del Acusado en Anticipación de Su Declaración de Culpabilidad.

Case Caption (Criminal).

Notice of Availability of United States Magistrate Judge to Exercise Jurisdiction.

Judicial Officer Initials.

Administrative Order 2007-6 - In the Matter of Rules of Professional Conduct.

Notice of Disposition in Fast Track Case.





CIVIL COVER SHEET.

JS 44 (Rev. 12/11) District of Colorado Form

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

**(b)** County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)

**DEFENDANTS**

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff

☐ 2 U.S. Government Defendant

☐ 3 Federal Question (U.S. Government Not a Party)

☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 7	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>LABOR</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input type="checkbox"/> 385 Property Damage <input type="checkbox"/> 386 Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable Sat TV <input type="checkbox"/> 850 Securities/Commodities' Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

☐ 1 Original Proceeding

☐ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from another district (specify)

☐ 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment  
☐

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: ☐ AP Docket

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☐ No

DATE SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## • Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service  
Or: "AP Docket"

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.



SUPPLEMENTAL CIVIL COVER SHEET FOR NOTICES OF REMOVAL.

SUPPLEMENTAL CIVIL COVER SHEET FOR NOTICES OF REMOVAL

Appendix B

The removing party shall complete the SUPPLEMENTAL CIVIL COVER SHEET FOR NOTICES OF REMOVAL and follow D.C.COLO.LCivR 81.1. and 28 U.S.C. § 1446(a).

Section A - Plaintiffs

Plaintiffs remaining in action at the time of filing the notice of removal.

1.
2.
3.
4.
5.
6.

Section B - Defendants

Defendants remaining in action at the time of filing the notice of removal.

1.
2.
3.
4.
5.
6.

Section C - Pending State Court Motions As of Date of Removal

Title of State Court Motion	Date Motion Filed
1.	
2.	
3.	
4.	
5.	
6.	
7.	

Section D - Scheduled State Court Hearings As of Date of Removal

Title of State Court Scheduled Hearing	Date of Hearing	Time of Hearing	Assigned State Judge
1.			
2.			
3.			
4.			

Signature \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Telephone Number: \_\_\_\_\_  
Date: \_\_\_\_\_  
State Court Case Number: \_\_\_\_\_

### SCHEDULE OF FEES.

Filing civil complaint or notice of removal.....	\$350.00
[EFFECTIVE MAY 1, 2013 - Administrative fee for filling a civil action, suit, or proceeding in a district court. <sup>1</sup> (This fee does not apply to persons granted in forma pauperis status under 28 U.S.C. § 1915.) .....	\$50.00]
Filing an application for habeas corpus.....	\$5.00
Jury fee.....	NONE
Filing responsive pleading, motion, or third-party pleadings .....	NONE
Certification of any document or paper .....	\$ 11.00
Certificate of Judgment.....	\$ 11.00
Certificate of Search .....	\$ 30.00
Registering judgment from another district (rj case) .....	\$ 46.00
Filing or indexing any paper <u>not</u> in a case or proceeding for which a case filing fee has been paid (mc and y cases) .....	\$ 46.00
Registration or revocation of power of attorney (sureties) .....	\$ 46.00
Reproduction of any record or paper (per sheet) .....	\$ .50
Production of a document from computer system (per page) .....	\$ .10
Duplicate certificate of admission/certificate of good standing .....	\$ 18.00
Admission of attorney to practice in U. S. District Court for the District of Colorado.....	\$186.00
Notice of Appeal (fees to be paid together)	
Filing Fee .....	\$ 5.00
Docket Fee .....	\$450.00
Appeal to a district judge from conviction by magistrate judge/misdemeanor case .....	\$ 37.00
Witness fee per day .....	\$ 40.00
Witness mileage, round-trip (per mile) .....	\$ .565
Retrieval from Federal Records Center .....	\$ 53.00
Reproduction of proceedings.....	\$ 30.00
Fee for returned check.....	\$ 53.00
Exemplifications.....	\$ 21.00

<sup>1</sup>Approved by the Judicial Conference of the United States at its September 2012 session.

(Rev. 01/01/13)

### UNITED STATES DISTRICT COURT DISTRICT OF COLORADO FACSIMILE COVER SHEET.

Pursuant to D.C.COLO.LCivR 5.1, this cover sheet must be submitted with any facsimile filing. A pleading or paper not requiring a filing fee and **no longer than ten pages**, including all attachments, may be filed with the clerk by means of facsimile during a business day. Facsimiles received by the clerk after 5:00 p.m. (Mountain Time) will be considered filed as of the next business day.

Clerk's Office facsimile telephone number: 303-335-2714

1. Date of transmission: \_\_\_\_\_
2. Name of attorney or *pro se* party making the transmission: \_\_\_\_\_  
Facsimile number: \_\_\_\_\_ Telephone number: \_\_\_\_\_
3. Case number, caption, and title of pleading or paper: \_\_\_\_\_

4. Number of pages being transmitted, including the facsimile cover sheet: \_\_\_\_\_  
 Instructions, if any: \_\_\_\_\_  
 (Rev. (12/08))

**CASE CAPTION (CIVIL).**

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

Plaintiff,

v.

Defendant.

(Title of Pleading or Paper)

\*\* Space should be provided for the court filing stamp in the upper right corner of the first page of each document.

(Rev. 04/15/02)

**INSTRUCTIONS FOR PREPARATION OF SCHEDULING ORDER.**

When the court has set a scheduling conference pursuant to Fed. R. Civ. P. 16 and D.C.COLO.LCivR 16.1 and 16.2, a scheduling order shall be prepared in accordance with these instructions. The rule 26(f) meeting shall be held at least 21 days before the proposed scheduling order is due to be tendered. The disclosures required by Fed. R. Civ. P. 26(a)(1) shall be exchanged at or within 14 days after the rule 26(f) meeting. Do not file any disclosure statements with the court.

Seven days before the scheduling conference (see Fed. R. Civ. P. 6 for all computations of time), counsel are to tender a proposed scheduling order which shall include the signatures of counsel and *pro se* parties and shall provide for approval by the court as specified on the attached form. Counsel and *pro se* parties should try, in good faith, to agree upon matters covered in the scheduling order. Any area of disagreement should be set forth with a brief statement concerning the basis for the disagreement. The parties should expect that the court will make modifications in the proposed scheduling order and will want to discuss all issues affecting management of the case.

D.C.COLO.LCivR 72.2 authorizes magistrate judges to exercise jurisdiction of civil matters upon the consent of the parties. If all parties have consented to the exercise of jurisdiction by a magistrate judge pursuant to D.C.COLO.LCivR 72.2, the "Notice of Availability of a United States Magistrate Judge to Exercise Jurisdiction and Consent to the Exercise of Jurisdiction by a United States Magistrate Judge" form and a proposed order of reference are to be filed promptly with the Clerk of the Court and the consent indicated in section 6. of the proposed scheduling order. Note that D.C.COLO.LCivR 72.2D. provides, in part: "Written consent to proceed before a magistrate judge must be filed no later than 14 days after the discovery cut-off date. In cases not requiring discovery, the parties shall have 40 days from the filing of the last responsive pleading to file their unanimous consent." Refer to D.C.COLO.LCivR 72.2F. if all parties have not been served or in the event additional parties are added after the scheduling conference.



Listed on the following pages as **Appendix F.1.** is the format for the proposed scheduling order. The bracketed and italicized information on the form explains what the court expects.

Also listed on the following pages as **Appendix F.2.** is the format for the proposed scheduling order in an ERISA action. The bracketed and italicized information on the form explains what the court expects.

Also listed on the following pages as **Appendix F.3.** is the format for the proposed joint case management plan for social security cases. The bracketed and italicized information on the form explains what the court expects.

Also listed on the following pages as **Appendix F.4.** is the format for the proposed joint case management plan for petitions for review of agency action in environmental cases. The bracketed and italicized information on the form explains what the court expects.

**Scheduling orders shall be double-spaced in accordance with D.C.COLO.LCivR 10.1E., even though the instructions in the following format for the proposed scheduling order are single-spaced.**

**PARTIES AND COUNSEL ARE DIRECTED TO THE COURT'S WEBSITE, <http://www.cod.uscourts.gov/Home.aspx>, FOR ITS LOCAL RULES AND THE GENERAL PROCEDURES OF EACH JUDICIAL OFFICER.**

(Rev. 12/01/11)

### Appendix F.1. CIVIL SCHEDULING ORDER.

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_

\*

Plaintiff(s),

v.

\*

Defendant(s).

#### CIVIL SCHEDULING ORDER

### 1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL AND *PRO SE* PARTIES

*[Provide the date of the conference and the names, addresses, and telephone numbers of counsel for each party and each pro se party. Identify by name the party represented by each counsel.]*

### 2. STATEMENT OF JURISDICTION

*[Provide a concise statement of the basis for subject matter jurisdiction with appropriate statutory citations. If jurisdiction is denied, give the specific reason for the denial.]*

### 3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff(s):

b. Defendant(s):

c. Other Parties:

*[Provide concise statements of all claims or defenses. Each party, in light of formal or informal discovery undertaken thus far, should take special care to eliminate frivolous claims or defenses. Fed. R. Civ. P. 11 and 16(c)(2)(A). Do not summarize the pleadings. Statements such as "defendant denies the material allegations of the complaint" are not acceptable.]*

#### 4. UNDISPUTED FACTS

The following facts are undisputed:

*[When the parties have the Rule 26(f) meeting, they should make a good-faith attempt to determine which facts are not in dispute.]*

#### 5. COMPUTATION OF DAMAGES

*[Include a computation of all categories of damages sought and the basis and theory for calculating damages. See Fed. R. Civ. P. 26(a)(1)(A)(iii). This should include the claims of all parties. It should also include a description of the economic damages, non-economic damages, and physical impairment claimed, if any.]*

#### 6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED.R.CIV.P. 26(f)

a. Date of Rule 26(f) meeting.

b. Names of each participant and party he/she represented.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

*[If a party's disclosures were not made within the time provided in Fed. R. Civ. P. 26(a)(1)(C) or by the date set by court order, the parties must provide an explanation showing good cause for the omission.]*

d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

e. Statement concerning any agreements to conduct informal discovery:

*[State what processes the parties have agreed upon to conduct informal discovery, such as joint interviews with potential witnesses or joint meetings with clients to discuss settlement, or exchanging documents outside of formal discovery. If there is agreement to conduct joint interviews with potential witnesses, list the names of such witnesses and a date and time for the interview which has been agreed to by the witness, all counsel, and all pro se parties.]*

f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

*[Counsel and pro se parties are strongly encouraged to cooperate in order to reduce the costs of litigation and expedite the just disposition of the case. Discovery and other litigation costs may be reduced, for example, through telephone depositions, joint repositories for documents, use of discovery in other cases, and extensive use of expert affidavits to support judicial notice. Counsel and pro se parties also will be expected to use a unified exhibit numbering system if required by the practice standards of the judicial officer presiding over the trial of this case.]*

g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

*[In such cases, the parties must indicate what steps they have taken or will take to (i) preserve electronically stored information; (ii) facilitate discovery of electronically stored information; (iii) limit the associated discovery costs and delay; (iv) avoid discovery disputes relating to electronic discovery; and (v) address claims of privilege or of protection as trial-preparation materials after production of computer-generated records. Counsel should describe any proposals or agreements regarding electronic discovery made at*



*the Rule 26(f) conference and be prepared to discuss issues involving electronic discovery, as appropriate, at the Scheduling Conference.]*

*[When the parties have their Rule 26(f) meeting, they must discuss any issues relating to the disclosure and discovery of electronically stored information, including the form of production, and also discuss issues relating to the preservation of electronically stored information, communications, and other data. At the Rule 26(f) meeting, the parties should make a good faith effort to agree on a mutually acceptable format for production of electronic or computer-based information. In advance of the Rule 26(f) meeting, counsel carefully investigate their client's information management systems so that they are knowledgeable as to its operation, including how information is stored and how it can be retrieved.]*

*h. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.*

*[The parties are required by Fed. R. Civ. P. 26(f)(2) to have discussed the possibilities for a prompt settlement or resolution of the case by alternate dispute resolution. They must also report the result of any such meeting, and any similar future meeting, to the magistrate judge within 14 days of the meeting.]*

## 7. CONSENT

*[Pursuant to D.C.COLO.LCivR 72.2, all full-time magistrate judges in the District of Colorado are specially designated under 28 U.S.C. § 636(c)(1) to conduct any or all proceedings in any jury or nonjury civil matter and to order the entry of judgment. Parties consenting to the exercise of jurisdiction by a magistrate judge must complete and file the court-approved Consent to the Exercise of Jurisdiction by a United States Magistrate Judge form.]*

*[Indicate below the parties' consent choice. Upon consent of the parties and an order of reference from the district judge, the magistrate judge assigned the case under 28 U.S.C. § 636(a) and (b) will conduct all proceedings related to the case.]*

All parties ☐ [have] ☐ [have not] consented to the exercise of jurisdiction of a magistrate judge.

## 8. DISCOVERY LIMITATIONS

*[In the majority of cases, the parties should anticipate that the court will adopt the presumptive limitations on depositions established in Fed. R. Civ. P. 30(a)(2)(A)(I) and 33(a)(I). The parties are expected to engage in pretrial discovery in a responsible manner consistent with the spirit and purposes of Fed. R. Civ. P. 1 and 26 through 37. The parties are expected to propose discovery limits that are proportional to the needs of the case, the amount in controversy, and the importance of the issues at stake in the action. See Fed. R. Civ. P. 26(g)(1)(B)(iii). The court must limit discovery otherwise permitted by the Federal Rules of Civil Procedure if it determines that "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the action." See Fed. R. Civ. P. 26(b)(2)(C).]*

*a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.*

*[If a party proposes to exceed the numerical limits set forth in Fed. R. Civ. P. 30(a)(2)(A)(I), at the scheduling conference they should be prepared to support that request by reference to the factors identified in Fed. R. Civ. P. 26(b)(2)(C).]*

*b. Limitations which any party proposes on the length of depositions.*

*c. Limitations which any party proposes on the number of requests for production and/or requests for admission.*

*[If the parties propose more than twenty-five (25) requests for production and/or requests for admission, at the scheduling conference they should be prepared to support that proposal by reference to the factors identified in Fed. R. Civ. P. 26(b)(2)(C).]*



d. Other Planning or Discovery Orders

*[Set forth any other proposed orders concerning scheduling or discovery. For example, the parties may wish to establish specific deadlines for submitting protective orders or for filing motions to compel.]*

## 9. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings:

*[Set time period within which to join other parties and to amend all pleadings. This deadline refers to timing only and does not eliminate the necessity to file an appropriate motion and to otherwise comply with Fed. R. Civ. P. 15. Unless otherwise ordered in a particular case, for good cause, this deadline should be no later than 45 days after the date of the scheduling conference, so as to minimize the possibility that late amendments and joinder of parties will precipitate requests for extensions of discovery cutoff, final pretrial conference, and dispositive motion dates. Counsel and pro se parties should plan discovery so that discovery designed to identify additional parties or claims is completed before these deadlines.]*

b. Discovery Cut-off:

c. Dispositive Motion Deadline:

*[Set time periods in which discovery is to be completed and dispositive motions are to be filed.]*

d. Expert Witness Disclosure

1. The parties shall identify anticipated fields of expert testimony, if any.

2. Limitations which the parties propose on the use or number of expert witnesses.

3. The parties shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before

\_\_\_\_\_, 20\_\_\_\_. *[This includes disclosure of information applicable to "Witnesses Who Must Provide A Written Report" under Rule 26(a)(2)(B) and information applicable to "Witnesses Who Do Not Provide a Written Report" under Rule 26(a)(2)(C).]*

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before

\_\_\_\_\_, 20\_\_\_\_. *[This includes disclosure of information applicable to "Witnesses Who Must Provide A Written Report" under Rule 26(a)(2)(B) and information applicable to "Witnesses Who Do Not Provide a Written Report" under Rule 26(a)(2)(C).]*

*[Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2)(B), no exception to the requirements of the Rule will be allowed by stipulation unless the stipulation is in writing and approved by the court. In addition to the requirements set forth in Rule 26(a)(2)(B)(I)-(vi), the expert's written report also must identify the principles and methods on which the expert relied in support of his/her opinions and describe how the expert applied those principles and methods reliably to the facts of the case relevant to the opinions set forth in the written report.]*

e. Identification of Persons to Be Deposed:

*[List the names of persons to be deposed and provide a good faith estimate of the time needed for each deposition. All depositions must be completed on or before the discovery cut-off date and the parties must comply with the notice and scheduling requirements set forth in D.C.COLOCivR 30.1.]*

f. Deadline for Interrogatories:

*[The parties are expected to serve interrogatories on opposing counsel or a pro se party on a schedule that allows timely responses on or before the discovery cut-off date.]*

g. Deadline for Requests for Production of Documents and/or Admissions

*[The parties are expected to serve requests for production and/or requests for admission on opposing counsel or a pro se party on a schedule that allows timely responses on or before the discovery cut-off date.]*

## 10. DATES FOR FURTHER CONFERENCES

*[The magistrate judge will complete this section at the scheduling conference if he or she has not already set deadlines by an order filed before the conference.]*

a. Status conferences will be held in this case at the following dates and times:

b. A final pretrial conference will be held in this case on \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

## 11. OTHER SCHEDULING MATTERS

a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.

b. Anticipated length of trial and whether trial is to the court or jury.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facility at 212 N. Wahsatch Street, Colorado Springs, Colorado; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado.

*[Determination of any such request will be made by the magistrate judge based on the individual needs of the case and the availability of space and security resources.]*

## 12. NOTICE TO COUNSEL AND PRO SE PARTIES

*[The following paragraphs shall be included in the scheduling order:]*

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D. by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1A.

In addition to filing an appropriate notice with the clerk's office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of counsel's address or telephone number with the clerk of the magistrate judge assigned to this case.

## 13. AMENDMENTS TO SCHEDULING ORDER

*[Include a statement that the scheduling order may be altered or amended only upon a showing of good cause.]*

DATED at Denver, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

BY THE COURT:

\_\_\_\_\_  
United States Magistrate Judge

APPROVED:

\_\_\_\_\_  
(Name)  
(Address)  
(Telephone Number)  
Attorney for Plaintiff  
(or Plaintiff, *Pro Se*)

\_\_\_\_\_  
(Name)  
(Address)  
(Telephone Number)  
Attorney for Defendant  
(or Defendant, *Pro Se*)

*[Please affix counsels' and any pro se party's signatures before submission of the final scheduling order to the court.]*

**Appendix F.2.**  
**CIVIL CASE SCHEDULING ORDER IN AN ERISA ACTION.**

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.:

Plaintiff(s),

v.

Defendant(s).

---

CIVIL CASE SCHEDULING ORDER IN AN ERISA ACTION

---

**1. DATE OF CONFERENCE  
AND APPEARANCES OF COUNSEL AND PRO SE PARTIES**

*[Provide the date of the conference and the names, addresses, and telephone numbers of counsel for each party and each pro se party. Identify by name the party represented by each counsel.]*

**2. STATEMENT OF JURISDICTION**

*[Provide a concise statement of the basis for subject matter jurisdiction with appropriate statutory citations. If jurisdiction is denied, give the specific reason for the denial.]*

**3. STATEMENT OF CLAIMS AND DEFENSES**

a. Plaintiff(s):

b. Defendant(s):

*[Provide concise statements of all claims or defenses. Each party, in light of formal or informal discovery undertaken thus far, should take special care to eliminate frivolous claims or defenses. Fed. R. Civ. P. 16(c)(1), 11. Do not summarize the pleadings. Statements such as "defendant denies the material allegations of the complaint" are not acceptable.]*

**4. COMPUTATION OF DAMAGES**

*[Include a computation of all categories of damages sought and the basis and theory for calculating damages. See Fed. R. Civ. P. 26(a)(1)(C). This should include the claims of all parties. It should also include a description of the economic damages, non-economic damages, and physical impairment claimed, if any.]*

**5. CONSENT**

*[Pursuant to D.C.COLO.LCivR 72.2, all full-time magistrate judges in the District of Colorado are specially designated under 28 U.S.C. § 636(c)(1) to conduct any or all proceedings in any jury or nonjury civil matter and to order the entry of judgment. Upon consent of the parties and an order of reference from the district judge, the magistrate*



*judge assigned the case under 28 U.S.C. § 636(a) and (b) will conduct all proceedings related to the case.]*

*[Indicate below the parties consent choice. Parties consenting to the exercise of jurisdiction by a magistrate judge must complete and file the court-approved Consent to the Exercise of Jurisdiction by a United States Magistrate Judge form.]*

All parties *[have or have not]* consented to the exercise of jurisdiction of a magistrate judge.

## 6. CASE PLAN AND SCHEDULE

*[In non-FOIA cases, the parties should provide a brief statement indicating whether they agree upon the administrative record and the applicable standard review. If there is a disagreement on the applicable standard of review, each party shall concisely set forth the bases for their position.]*

a. Deadline for submission of the Administrative Record or Index pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973):

b. Deadline for filing any Motion Requesting Discovery:

*[A party moving for discovery must set forth in their motion the factual and legal bases for the requested discovery, and must append to their motion proposed interrogatories and/or requests for production. A party requesting depositions should also provide a list of proposed deponents and a brief summary of the information to be sought from each deponent.]*

c. Deadline for Filing a Motion to Supplement the Administrative Record:

*[A party moving to supplement the administrative record must set forth in their motion the factual and legal bases for the requested relief and must identify the documents, materials or facts they wish to incorporate in the administrative record.]*

d. Deadline for filing Plaintiff's Opening Brief:

e. Deadline for filing Defendant's Response Brief:

f. Deadline for filing Plaintiff's Reply Brief:

*[The parties must file, contemporaneously with the filing of Plaintiff's Reply Brief, a "Joint Motion for Determination" which will serve as notice to the court that briefing has been completed.]*

## 7. CONFERENCES

*[The parties must certify here that, as required by Fed. R. Civ. P. 26(f), they have discussed the possibilities for a prompt settlement or resolution of the case by alternate dispute resolution. They must also report the result of any such meeting, and any similar future meeting, to the magistrate judge within 14 days of the meeting.]*

*[The magistrate judge will complete this section at the scheduling conference if he or she has not already set deadlines by an order filed before the conference.]*

a. An early neutral evaluation will be held on \_\_\_\_\_ at \_\_\_\_\_ o'clock .m.

( ) *Pro se* parties and attorneys only need be present.

( ) *Pro se* parties, attorneys, and client representatives must be present.

( ) Each party shall submit a Confidential Statement to the magistrate judge on or before \_\_\_\_\_ outlining the facts and issues, as well as the strengths and weaknesses of their case.

b. Status conferences will be held in this case at the following dates and times:

## 8. OTHER MATTERS

*[The following paragraphs shall be included in the scheduling order:]*

In addition to filing an appropriate notice with the clerk's office, counsel must file a copy of any motion for withdrawal, motion for substitution of counsel, or notice of change of

counsel’s address or telephone number with the clerk of the magistrate judge assigned to this case.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures established by the judicial officer presiding over the trial of this case.

In addition to filing an appropriate notice with the clerk’s office, a *pro se* party must file a copy of a notice of change of his or her address or telephone number with the clerk of the magistrate judge assigned to this case.

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1D, by submitting proof that a copy of the motion has been served upon the moving attorney’s client, all attorneys of record, and all *pro se* parties.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .

BY THE COURT:

\_\_\_\_\_  
United States Magistrate Judge

APPROVED:

\_\_\_\_\_  
(Name)  
(Address)  
(Telephone Number)  
Attorney for Plaintiff  
(or Plaintiff, *Pro Se*)

\_\_\_\_\_  
(Name)  
(Address)  
(Telephone Number)  
Attorney for Defendant  
(or Defendant, *Pro Se*)

*[Please affix counsels’ and any pro se party’s signatures before submission of the final pretrial order to the court.]*

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**Appendix F.3.**  
**JOINT CASE MANAGEMENT PLAN FOR SOCIAL SECURITY CASES.**

\_\_\_\_\_  
**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-cv-00000-AP *[place AP docket number here]*

XXXXX,  
Plaintiff,  
v.

YYYYY,  
Defendant.

---

**JOINT CASE MANAGEMENT PLAN FOR SOCIAL SECURITY CASES**

---

**1. APPEARANCES OF COUNSEL AND *PRO SE* PARTIES**

For Plaintiff:

For Defendant:

**2. STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION**

The Court has jurisdiction based on section 205(g) of the Social Security Act, 42 U.S.C. 405(g).

### **3. DATES OF FILING OF RELEVANT PLEADINGS**

A. Date Complaint Was Filed:

B. Date Complaint Was Served on U.S. Attorney's Office:

C. Date Answer and Administrative Record Were Filed:

### **4. STATEMENT REGARDING THE ADEQUACY OF THE RECORD**

*[Provide concise statements regarding the completeness or accuracy of the administrative record. Do not summarize the pleadings or make statements about the merits, or lack thereof, of the case or the defenses.]*

### **5. STATEMENT REGARDING ADDITIONAL EVIDENCE**

*[Provide concise statements regarding any additional evidence either party has submitted or intends to submit. Do not summarize the pleadings or make statements about the merits, or lack thereof, of the case or the defenses.]*

### **6. STATEMENT REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES**

*[Provide concise statements regarding whether the case involves unusually complicated or out-of-the-ordinary claims, such as a constitutional challenge to a statute or regulation, an alleged due process violation, a request for injunctive or emergency relief, etc. It would be the unusual case that has any information in this section.]*

### **7. OTHER MATTERS**

*[Describe any other matters either party believes should be brought to the attention of the Court. The parties MUST state whether the case is on appeal from a decision issued on remand from this court and include the case number and district judge who entered the order for remand.]*

### **8. PROPOSED BRIEFING SCHEDULE**

*[The plaintiff's opening brief should be due no later than 30-40 days from the filing of this Joint Case Management Plan; the response brief due 30 days thereafter; and the reply brief (if any) due 15 days thereafter.]*

A. Plaintiff's Opening Brief Due:

B. Defendant's Reply Brief (If Any) Due:

C. Plaintiff's Reply Brief (If Any) Due:

### **9. STATEMENTS REGARDING ORAL ARGUMENT**

*[The parties should state whether they request oral argument. If oral argument is requested, the requesting party(ies) should explain the need for oral argument. Even if oral argument is requested by one or both parties, it will be the decision of the Judge to whom the case is randomly drawn to determine whether there is a need for such argument.]*

A. Plaintiff's Statement:

B. Defendant's Statement:

### **10. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE**

*[The parties should state whether they intend to consent to the exercise of jurisdiction by a magistrate judge in accordance with D.C.COLO.LCivR 72.2. Pursuant to this Rule, all full-time magistrate judges in the District of Colorado are specially designated under 28 U.S.C. § 636(c)(1) to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment. If all parties consent to the exercise of jurisdiction by a magistrate judge under D.C.COLO.LCivR 72.2, they must file a completed "Notice of Availability . . . and Consent to Exercise Jurisdiction" form, which Plaintiff should have received from the clerk upon filing, NO LATER THAN 40 days after the date of Defendant's Answer, or within 20 days of the filing of the proposed Plan. Upon consent of the parties and an order of reference from the district judge, jurisdiction over the ultimate*



*disposition of this case will be assigned to the magistrate judge drawn at random under D.C.COLO.LCivR 72.2.]*

*Indicate below the parties' consent choice.*

**A. ( ) All parties have consented to the exercise of jurisdiction of a United States Magistrate Judge.**

**B. ( ) All parties have not consented to the exercise of jurisdiction of a United States Magistrate Judge.**

# **11. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN**

THE PARTIES FILING MOTIONS FOR EXTENSION OF TIME OR CONTINUANCES MUST COMPLY WITH D.C.COLO.LCivR 7.1(C) BY SUBMITTING PROOF THAT A COPY OF THE MOTION HAS BEEN SERVED UPON THE MOVING ATTORNEY'S CLIENT, ALL ATTORNEYS OF RECORD, AND ALL *PRO SE* PARTIES.

*The parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.*

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .

BY THE COURT:

\_\_\_\_\_  
U.S. DISTRICT COURT JUDGE

APPROVED:

UNITED STATES ATTORNEY

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
By:

(Address)

Special Assistant U.S. Attorney

Telephone:

*Mailing Address:*

*e-mail address*

Attorney(s) for Plaintiff(s)

*e-mail address*

(or Plaintiff, *pro se*)

*Street Address:*

Please affix counsel's signatures and any *pro se* party's signatures before submission of the proposed Joint Case Management Plan to the court.

Revised: 5/29/2012

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## **Appendix F.4. JOINT CASE MANAGEMENT PLAN FOR PETITIONS FOR REVIEW OF AGENCY ACTION.**

\_\_\_\_\_  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.: 00-cv-0000-AP [*place AP docket number here*]

XXXXXX,

Petitioner,  
v.  
YYYYY,  
Respondent.

---

JOINT CASE MANAGEMENT PLAN FOR PETITIONS  
FOR REVIEW OF AGENCY ACTION

---

1. APPEARANCES OF COUNSEL

For Plaintiff:

For Defendant:

Special Assistant United States Attorney

2. STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION

The Court has jurisdiction based on the presentation of federal question, 28 U.S.C. § 1331.

*[If jurisdiction is also based on a specific statutory provision, i.e. the citizen-suit provision of the Endangered Species Act, parties should so state in this section. Additionally, the Respondent should identify any anticipated jurisdictional defenses (i.e., justiciability, ripeness, standing, failure to exhaust remedies, etc.)]*

3. DATES OF FILING OF RELEVANT PLEADINGS

A. Date Petition for Review Was Filed:

B. Date Petition for Review Was Served on U.S. Attorney's Office:

C. Date Answer or Other Response Was Filed:

4. STATEMENT(S) REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES

*[Provide concise statements regarding whether the case involves unusually complicated or out-of-the-ordinary claims, such as a constitutional challenge to a statute or regulation, an alleged due process violation, a request for emergency relief, etc. It would be the unusual case that has any information in this section.]*

5. OTHER MATTERS

*[Describe any other matters either party believes should be brought to the attention of the Court.]*

6. PROPOSED BRIEFING SCHEDULE

*[This briefing schedule is intended to provide reasonable default deadlines which expedite the review process without compromising the ability of Petitioners or Respondents to adequately develop their arguments. The schedule may be modified by agreement of the parties upon a showing of good cause. If parties have reached agreement on page limits for their merits briefs, they should so state here.]*

**A. Deadline for Filing Administrative Record:**

*[The Deadline for Filing the Administrative Record should be 30 days from the date of the Response to the Petition. When possible, the record shall be filed in a searchable electronic format, i.e. .pdf]*

**B. Deadline for Parties to Confer on Record Disputes:**

*[The Deadline for Parties to Confer on Record Disputes should be 30 days from the date the Administrative Record is filed.]*

### **C. Deadline for Filing Motions to Complete and/or Supplement the Administrative Record:**

*[The Deadline for Filing Motions to Complete and/or Supplement the Administrative Record should be 30 days from the Deadline for Parties to Confer on Record Disputes. Response and Reply deadlines for such motions are governed by D.C.COLO.L.Civ.R. 7.1(C). The parties should review and familiarize themselves with the Court's decisions in CNE v. Salazar, 711 F. Supp.2d 1267; Wild Earth Guardians v. USFS, 713 F.Supp.2d 1243.]*

#### **D. Petitioner's Opening Brief Due:**

*[Petitioner's Opening Brief is due 30 days after the Deadline for Filing Motions to Complete and/or Supplement the Administrative Record. If there are challenges to the record, the briefing schedule will be modified accordingly.]*

#### **E. Respondent's Response Brief Due:**

*[Respondent's Response Brief is due 30 days after the filing of Petitioner's Opening Brief.]*

#### **F. Petitioner's Reply Brief (If Any) Due:**

*[Petitioner's Reply Brief is due 15 days after the filing of Respondent's Response.]*

### **7. STATEMENTS REGARDING ORAL ARGUMENT**

*[The parties should state whether they request oral argument. If oral argument is requested, the requesting party(ies) should explain the need for oral argument. Even if oral argument is requested by one or both parties, it will be the decision of the Judge to whom the case is randomly drawn to determine whether there is a need for such argument.]*

#### **A. Petitioner's Statement:**

#### **B. Respondent's Statement:**

### **8. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE**

*[The parties should state whether they intend to consent to the exercise of jurisdiction by a magistrate judge in accordance with D.C.COLO.LCivR 72.2. Pursuant to this Rule, all full-time magistrate judges in the District of Colorado are specially designated under 28 U.S.C. § 636(c)(1) to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment. If all parties consent to the exercise of jurisdiction by a magistrate judge under D.C.COLO.LCivR 72.2, they must file a completed "Notice of Availability . . . and Consent to Exercise Jurisdiction" form, which Plaintiff should have received from the clerk upon filing, NO LATER THAN 40 days after the date of Defendant's Answer, or within 21 days of the filing of the proposed Plan.]*

Upon consent of the parties and an order of reference from the district judge, the magistrate judge assigned the case under 28 U.S.C. § 636(a) and (b) will conduct all proceedings in the case.]

*Indicate below the parties' consent choice.*

**A. ( ) All parties have consented to the exercise of jurisdiction of a United States Magistrate Judge.**

**B. ( ) All parties have not consented to the exercise of jurisdiction of a United States Magistrate Judge.**

### **9. OTHER MATTERS**

*[Parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 5.1G. by submitting proof that a copy of the motion has been served upon all attorneys of record and all pro se parties. Parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1E. by serving such motion on the Moving Attorney's Client.]*

### **10. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN**

*[The parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.]*



DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

BY THE COURT:

U.S. District Court Judge

APPROVED:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
*e-mail address*

\_\_\_\_\_  
Telephone:

\_\_\_\_\_  
Attorney(s) for Petitioner(s)

\_\_\_\_\_  
(or Petitioner, *pro se*)

\_\_\_\_\_  
*Street Address:*

\_\_\_\_\_  
United States Attorney's Office

\_\_\_\_\_  
Attorney for Respondent(s)

\_\_\_\_\_  
By:

\_\_\_\_\_  
*Name*

\_\_\_\_\_  
U.S. Department of Justice

\_\_\_\_\_  
Environmental and Natural Resources

\_\_\_\_\_  
Division

\_\_\_\_\_  
*e-mail address*

\_\_\_\_\_  
*Mailing Address:*

*[Please affix counsel's and any pro se party's signatures before submission of the final pretrial order to the court.]*

## INSTRUCTIONS FOR PREPARATION OF FINAL PRETRIAL ORDER.

Counsel and any *pro se* party are directed to meet in advance of the pretrial conference and jointly to develop the contents of the proposed final pretrial order, which shall be presented for the court's approval no later than seven days before the final pretrial conference. Also, attention is directed to Fed. R. Civ. P. 16(d), which provides, in pertinent part, that "[t]he conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties."

Listed on the following pages is a format for matters to be included in the final pretrial order. For convenience of the court, counsel, and any *pro se* party, the sequence and terminology in this format should be used in the preparation of the final pretrial order. The bracketed and italicized information on the form explains what the court expects.

**Final pretrial orders shall be double-spaced in accordance with D.C.COLO.LCivR 10.1E., even though the instructions in the following format for the proposed scheduling order are single-spaced.**

(Rev. 12/2011)

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No.:

Plaintiff(s),

v.

Defendant(s).

FINAL PRETRIAL ORDER

## 1. DATE AND APPEARANCES

## 2. JURISDICTION

*[Include a statement of the basis for subject matter jurisdiction with appropriate statutory citations. If jurisdiction is denied, give the specific reason for the denial.]*

## 3. CLAIMS AND DEFENSES

*[Summarize the claims and defenses of all parties, including the respective versions of the facts and legal theories. Do not copy the pleadings. Identify the specific relief sought. Eliminate claims and defenses which are unnecessary, unsupported, or no longer asserted.]*

## 4. STIPULATIONS

*[Set forth all stipulations concerning facts, evidence, and the applicability of statutes, regulations, rules, ordinances, etc.]*

## 5. PENDING MOTIONS

*[List any pending motion to be decided before trial, giving the filing date and the filing date of any briefs in support or opposition. Include any motions on which the court expressly has postponed ruling until trial on the merits. If there are no pending motions, please state, "None."]*

## 6. WITNESSES

a. List the nonexpert witnesses to be called by each party. List separately:

(1) witnesses who will be present at trial (see Fed. R. Civ. P. 26(a)(3)(A));

(2) witnesses who may be present at trial if the need arises (see Fed. R. Civ. P. 26(a)(3)(A)); and

(3) witnesses where testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony. See Fed. R. Civ. P. 26(a)(3)(B).

b. List the expert witnesses to be called by each party. List separately:

(1) witnesses who will be present at trial (see Fed. R. Civ. P. 26(a)(3)(A));

(2) witnesses who may be present at trial (see Fed. R. Civ. P. 26(a)(3)(A)); and

(3) witnesses where testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony. See Fed. R. Civ. P. 26(a)(3)(B).

*[With each witness' name, set forth (1) the witness' address and telephone number if not previously disclosed, (2) a short statement as to the nature and purpose of the witness' testimony, and (3) whether he or she is expected to testify in person or by deposition.]*

## 7. EXHIBITS

*[a. List the exhibits to be offered by each party and identify those to be stipulated into evidence. This list should be specific enough so that other parties and the court can understand, merely by referring to the list, each separate exhibit which will be offered. General references such as "all deposition exhibits" or "all documents produced during discovery" are unacceptable.]*

- (1) Plaintiff(s):
- (2) Defendant(s):
- (3) Other parties:

*[The following paragraph shall be included in the final pretrial order.]*

b. Copies of listed exhibits must be provided to opposing counsel and any *pro se* party no later than 30 days before trial. The objections contemplated by Fed. R. Civ. P. 26(a)(3) shall be filed with the clerk and served by hand delivery or facsimile no later than 14 days after the exhibits are provided.

## 8. DISCOVERY

*[Use the following language:]*

Discovery has been completed.

*[Unless otherwise ordered, upon a showing of good cause in an appropriate motion, there will be no discovery after entry of the final pretrial order.]*

## 9. SPECIAL ISSUES

*[List any unusual issues of law which the court may wish to consider before trial. If none, please state, "None."]*

## 10. SETTLEMENT

*[Include a certification by the undersigned counsel for the parties and any pro se party that:]*

- a. Counsel for the parties and any *pro se* party met (in person) (by telephone) on \_\_\_\_\_, 20\_\_\_\_, to discuss in good faith the settlement of the case.
- b. The participants in the settlement conference, included counsel, party representatives, and any *pro se* party.
- c. The parties were promptly informed of all offers of settlement.
- d. Counsel for the parties and any *pro se* party (do) (do not) intend to hold future settlement conferences.
- e. It appears from the discussion by all counsel and any *pro se* party that there is *[select one]*:
  - (a good possibility of settlement.)
  - (some possibility of settlement.)
  - (little possibility of settlement.)
  - (no possibility of settlement.)
- f. Counsel for the parties and any *pro se* party considered ADR in accordance with D.C.COLO.LCivR.16.6.

## 11. OFFER OF JUDGMENT

*[The following paragraph shall be included in the final pretrial order:]*

Counsel and any *pro se* party acknowledge familiarity with the provision of Rule 68 (Offer of Judgment) of the Federal Rules of Civil Procedure. Counsel have discussed it with the clients against whom claims are made in this case.

## 12. EFFECT OF FINAL PRETRIAL ORDER

*[The following paragraph shall be included in the final pretrial order:]*

Hereafter, this Final Pretrial Order will control the subsequent course of this action and the trial, and may not be amended except by consent of the parties and approval by the court or by order of the court to prevent manifest injustice. The pleadings will be deemed merged herein. This Final Pretrial Order supersedes the Scheduling Order. In the event of



ambiguity in any provision of this Final Pretrial Order, reference may be made to the record of the pretrial conference to the extent reported by stenographic notes and to the pleadings.

**13. TRIAL AND ESTIMATED TRIAL TIME;  
FURTHER TRIAL PREPARATION PROCEEDINGS**

[State:

- 1. whether trial is to the court or a jury or both,
- 2. estimated trial time,
- 3. situs of trial, and
- 4. any other orders pertinent to the trial proceedings.]

[Counsel and the parties should note that the procedures for setting and conducting trial and for further conferences before trial vary according to the district judge assigned to the case. The judges all have written procedures which can be obtained from the clerk's office.]

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

BY THE COURT:

\_\_\_\_\_  
United States Magistrate Judge

APPROVED:

\_\_\_\_\_  
(Name)  
(Address)  
(Telephone Number)  
Attorney for Plaintiff  
(or Plaintiff, Pro Se)

\_\_\_\_\_  
(Name)  
(Address)  
(Telephone Number)  
Attorney for Defendant  
(or Defendant, Pro Se)

[Please affix counsels' and any pro se party's signatures before submission of the final pretrial order to the court.]

**INFORMATION FOR TEMPORARY RESTRAINING ORDER**

\_\_\_\_\_  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No.:

Plaintiff(s),  
v.

Defendant(s).

**INFORMATION FOR TEMPORARY RESTRAINING ORDER**

Attorney for Plaintiff: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Attorney for Defendant: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Concise statement as to type of claim: \_\_\_\_\_

Jurisdiction (cite statute) \_\_\_\_\_

Hearing: See D.C.COLO.LCivR.7.1A

Date Motion for Temporary Restraining Order filed \_\_\_\_\_

Estimated length of hearing \_\_\_\_\_

Request hearing be set for \_\_\_\_\_ today \_\_\_\_\_ tomorrow \_\_\_\_\_ within one week

Reason why immediate action is \_\_\_\_\_

Notice:

Has opposing party and/or attorney been notified? \_\_\_\_\_ Yes \_\_\_\_\_ No

If "yes," state when \_\_\_\_\_ and by what means \_\_\_\_\_

If "no," state reason \_\_\_\_\_

(Rev. 11/04)

### PLEA AGREEMENT

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Criminal Case No.

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

1.

Defendant(s).

### PLEA AGREEMENT

The United States of America (the government), by and through \_\_\_\_\_, Assistant United States Attorney for the District of Colorado, and the defendant, \_\_\_\_\_, personally and by counsel, \_\_\_\_\_, submit the following Plea Agreement pursuant to D.C.COLO.LCrR 11.1.

#### I. AGREEMENT

The defendant agrees to plead guilty to \_\_\_\_\_ of the Indictment *[or Information]*, charging a violation of \_\_\_\_\_ U.S.C. § \_\_\_\_\_, \_\_\_\_\_. *[Insert additional charges, if any.]*

*[Set forth the complete agreement between the parties, including whether the agreement is pursuant to Fed. R. Crim. P. 11(c)(1)(A), (B), or (C), and whether there are agreements regarding departures, variances or other sentencing matters. Also set forth any agreements regarding forfeiture or restitution.]*

*[If the parties intend to tender any agreement regarding waiver of appellate rights, insert here.]*

#### II. ELEMENTS OF THE OFFENSE(S)

The parties agree that the elements of the offense[s] to which this plea is being tendered are as follows:

*[Set forth each element required by law for the commission of each criminal offense to which the defendant intends to enter a plea.]*

### III. STATUTORY PENALTIES

The maximum statutory penalty for a violation of \_\_\_\_\_ U.S.C. § \_\_\_\_\_ is: not more than \_\_\_\_\_ months imprisonment; not more than \$\_\_\_\_\_ fine, or both; not more than \_\_\_\_\_ years supervised release; \$\_\_\_\_\_ special assessment fee; plus \_\_\_\_\_ restitution. *[Insert, if applicable: The minimum statutory penalty is \_\_\_\_\_ months imprisonment.]*

*[Insert, if applicable, any mandatory consecutive term of imprisonment required by law.]*

*[Insert, if the defendant is pleading to multiple counts: The Court will impose a separate sentence on each count of conviction and may, to the extent permitted by law, impose such sentences either concurrently with or consecutively to each other.]*

*[Insert, if applicable, any term of supervised release: at least \_\_\_\_\_ years, but not more than \_\_\_\_\_ years.]*

If probation or supervised release is imposed, a violation of any condition of probation or supervised release may result in a separate prison sentence and additional supervision.

### IV. COLLATERAL CONSEQUENCES

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury. *[Insert if applicable: If the defendant is an alien, the conviction may cause the defendant to be deported or confined indefinitely if there is no country to which the defendant may be deported, to be denied admission to the United States in the future, and to be denied citizenship.]*

### V. STIPULATION OF FACTS

The parties agree that there is a factual basis for the guilty plea[s] that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense[s] of conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. §3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are known to be in dispute at the time of the execution of the plea agreement.

This stipulation of facts does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have stipulated and which are relevant to the Court's guideline computations, to other 18 U.S.C. §3553 factors, or to the Court's overall sentencing decision.

The parties agree that the date on which relevant conduct began is \_\_\_\_\_.

The parties agree as follows: *[Insert facts and qualifications or disagreements, if any]*

### VI. ADVISORY GUIDELINE COMPUTATION AND 3553 ADVISEMENT

The parties understand that the imposition of a sentence in this matter is governed by 18 U.S.C. §3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission. In order to aid the Court in this regard, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are in dispute.

A. The base guideline is § \_\_\_\_\_, with a base offense level of \_\_\_\_\_.

B. *[Insert specific offense characteristics.]*

C. *[Insert victim-related, role-in-offense obstruction and/or multiple-count adjustments.]*



D. The adjusted offense level therefore would be \_\_\_\_\_.

E. *[Insert the parties' positions on the adjustment for acceptance of responsibility.]* The resulting offense level therefore would be \_\_\_\_\_.

F. The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court based on the defendant's prior convictions. Based on information currently available to the parties, it is estimated that the defendant's criminal history category would be \_\_\_\_\_.

G. The career offender/criminal livelihood/armed career criminal adjustments *[would or would not]* apply. *[If any of these adjustments applies, identify the convictions or facts which are believed to trigger the adjustment and include the final offense level and/or criminal history category.]*

H. The advisory guideline range resulting from these calculations is \_\_\_\_\_ months. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the offense level(s) estimated above could conceivably result in a range from \_\_\_\_\_ months (bottom of Category I) to \_\_\_\_\_ months (top of Category VI). The guideline range would not exceed, in any case, the cumulative statutory maximums applicable to the counts of conviction.

I. Pursuant to guideline § 5E1.2, assuming the estimated offense level above, the fine range for this offense would be \$\_\_\_\_\_ to \$\_\_\_\_\_, plus applicable interest and penalties.

J. Pursuant to guideline § 5D1.2, if the Court imposes a term of supervised release, that term is *[insert if applicable: at least \_\_\_\_\_ years, but]* not more than \_\_\_\_\_ years.

K. *Describe any restitution orders or conditions required by guideline § 5E1.1.]*

The parties understand that although the Court will consider the parties' estimate, the Court must make its own determination of the guideline range. In doing so, the Court is not bound by the position of any party.

No estimate by the parties regarding the guideline range precludes either party from asking the Court, within the overall context of the guidelines, to depart from that range at sentencing if that party believes that a departure is specifically authorized by the guidelines or that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the advisory guidelines. Similarly, no estimate by the parties regarding the guideline range precludes either party from asking the Court to vary entirely from the advisory guidelines and to impose a non-guideline sentence based on other 18 U.S.C. §3553 factors. *[Adjust or delete language to account for any Rule 11(c)(1)(C) agreement or other agreement as to departures or variances.]*

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. §3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be less than that called for by the advisory guidelines (in length or form), within the advisory guideline range, or above the advisory guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. §3553 factor. *[Insert if Rule 11(c)(1)(C) agreement: However, because this plea agreement is made pursuant to Rule 11(c)(1)(C), the Court is bound by the parties' agreement once the Court accepts the plea agreement. Alternatively, if the Court determines that it intends to impose a sentence different from that agreed to by the parties as part of this agreement, the Court must first give the parties an opportunity to withdraw from this agreement before it may impose any such different sentence.]*

## VII. ENTIRE AGREEMENT

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings, or assurances, express or implied. In entering this agreement, neither the government nor the defendant has relied, or is relying, on any terms, promises, conditions, or assurances not expressly stated in this agreement.

Date: \_\_\_\_\_

[insert name]  
Defendant

Date: \_\_\_\_\_

[insert name]  
Attorney for Defendant

Date: \_\_\_\_\_

[insert name]

Revised: 04/25/2012

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**CONVENIO PARA ACEPTACIÓN DE CULPABILIDAD**

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**TRIBUNAL FEDERAL DE PRIMERA INSTANCIA  
DEL DISTRITO DE COLORADO**

Causa penal Nro.

LOS ESTADOS UNIDOS DE AMÉRICA,

Parte Acusadora,

contra

1.

Acusado(s)

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**CONVENIO PARA ACEPTACIÓN DE CULPABILIDAD**

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Los Estados Unidos de América (la Fiscalía), representados por y a través de \_\_\_\_\_, Fiscal Federal Adjunto para el Distrito de Colorado, y el acusado, \_\_\_\_\_, personalmente y por medio de su abogado, \_\_\_\_\_, presentan el siguiente Convenio para aceptación de culpabilidad, de conformidad con la Regla 11.1 del Reglamento Local del Tribunal Federal de Colorado.

**I. CONVENIO**

El acusado conviene en declararse culpable ante \_\_\_\_\_ de la Acusación formal del Jurado indagatorio *[or de la Acusación directa de la Fiscalía]*, en la que se le acusa de la contravención del Capítulo \_\_\_\_\_ del Código Federal, Artículo(s) \_\_\_\_\_. *[Insert additional charges, if any.]*

*[Set forth the complete agreement between the parties, including whether the agreement is pursuant to Fed. R. Crim. P. 11(c)(1)(A), (B), or (C), and whether there are agreements regarding departures, variances or other sentencing matters. Also set forth any agreements regarding forfeiture or restitution.]*

*[If the parties intend to tender any agreement regarding waiver of appellate rights, insert here.]*

**II. ELEMENTOS DEL (DE LOS) DELITO(S)**

Las partes convienen en que los elementos del (de los) cargo(s) ante el (los) cual(es) el acusado aceptará su culpabilidad son:

*[Set forth each element required by law for the commission of each criminal offense to which the defendant intends to enter a plea.]*

### III. SANCIONES PREVISTAS POR LEY

La sanción máxima prevista por ley por la contravención del Capítulo \_\_\_\_ del Código Federal, Artículo(s) \_\_\_\_ es: un plazo de reclusión carcelaria máximo de \_\_\_\_ meses; una multa máxima de US\$ \_\_\_\_, o ambas cosas; un plazo de excarcelación supervisada máximo de \_\_\_\_ años y una tasa especial de US\$ \_\_\_\_; así como indemnización por un monto de US\$ \_\_\_\_\_. [*Insert, if applicable: La pena mínima prevista por ley es de \_\_\_\_ meses de reclusión.*]

[*Insert, if applicable, any mandatory consecutive term of imprisonment required by law.*]

[*Insert, if the defendant is pleading to multiple counts:* El Juez podrá imponer una pena independiente para cada cargo por el que se condena al acusado y, en la medida que lo prevea la ley, podrá ordenar que dichas penas se purguen simultáneamente o consecutivamente.]

[*Insert, if applicable, any term of supervised release:* El plazo de excarcelación supervisada será de mínimo \_\_\_\_ años, más no excederá los \_\_\_\_ años.]

Si se impusiera un plazo de libertad vigilada o excarcelación supervisada, la contravención de cualquiera de las condiciones de la libertad vigilada o la excarcelación supervisada podrá acarrear una condena independiente a prisión y un plazo adicional de supervisión.

### IV. CONSECUENCIAS COLATERALES

La condena podría acarrear la pérdida de ciertos derechos civiles, inclusive, sin limitación, el derecho a poseer armas de fuego, a votar, a ocupar un cargo como funcionario público electo y a formar parte de un jurado. [*Insert, if applicable: Si el acusado es extranjero, la condena podrá llevar a su deportación de los Estados Unidos o a su reclusión indefinida si no hubiera un país al cual deportarlo; a que se le negara el ingreso a los Estados Unidos en el futuro, así como la ciudadanía de dicho país.*]

### V. ESTIPULACIÓN DE LOS HECHOS

Las partes están de acuerdo en que existe un fundamento para la declaración de culpabilidad que presentará el acusado en virtud del presente convenio. Dicha base fáctica se expone a continuación. Debido a que, como parte de la metodología para formular la pena, el Juez tiene que calcular el rango condenatorio de carácter consultivo para el (los) delito(s) por el (los) cual(es) se condenará al acusado; tener en cuenta la conducta pertinente, así como los demás factores estipulados en el Capítulo 18 del Código Federal, Artículo 3553, podrán incluirse a continuación hechos adicionales relativos a dichas consideraciones y cálculos. En la medida que las partes estén en desacuerdo sobre los hechos expuestos a continuación, el relato de los hechos identifica los factores controvertidos en el momento de la firma del Convenio para aceptación de culpabilidad.

La presente exposición de los hechos no impide a ninguna de las partes que para fines de la imposición de la pena, *a posteriori*, presente ante el Juez hechos adicionales que no contradigan los hechos relatados en el presente acuerdo, convenidos entre las partes y que se consideran pertinentes para el cálculo del rango condenatorio por parte del Juez, para otros factores enumerados en el Capítulo 18 del Código Federal, Artículo 3553, o para la imposición de penas en general por parte del Juez.

Las partes convienen en que la fecha en que comenzó la conducta delictiva en esta causa fue el \_\_\_\_\_.

Las partes convienen en: [*Insert facts and qualifications or disagreements, if any*]



## VI. CÁLCULO DE LA PENA DE CARÁCTER CONSULTIVO Y NOTIFICACIÓN DE LOS FACTORES DISPUESTOS EN EL ARTÍCULO 3553

Las partes entienden que la imposición de la pena en esta causa se rige por el Capítulo 18 del Código Federal, Artículo 3553. Al definir la pena específica a imponer, el Juez deberá tener en cuenta siete factores. Uno de esos siete factores es el rango condenatorio calculado por el Juez de conformidad con la Pautas condenatorias federales de carácter consultivo emitidas por la Comisión federal de imposición de penas. A fin de facilitarle dicha labor al Juez, las partes exponen a continuación su estimado del rango condenatorio consultivo previsto en las Pautas condenatorias federales. En la medida que las partes estén en desacuerdo sobre el cálculo del rango condenatorio, los cálculos que se presentan a continuación identifican los factores controvertidos.

A. La pauta básica la constituye el Artículo \_\_\_\_\_ de las Pautas condenatorias federales, que prevé un nivel delictivo básico de \_\_\_\_\_.

B. *[Insert specific offense characteristics.]*

C. *[Insert victim-related, role-in-offense obstruction and/or multiple-count adjustments.]*

D. Por consiguiente, el nivel delictivo ajustado sería \_\_\_\_\_.

E. *[Insert the parties' positions on the adjustment for acceptance of responsibility.]* Por consiguiente, el nivel delictivo resultante sería \_\_\_\_\_.

F. Las partes entienden que el cálculo de los antecedentes penales del acusado es de carácter provisional. Su categoría de antecedentes penales será determinada por el Juez con base en sus condenas previas. Con base en la información de que tienen conocimiento las partes a la fecha, se cree que al acusado le corresponde la Categoría de antecedentes penales \_\_\_\_\_.

G. *[Career offender, etc. adjustments would / would not apply. Rigen / No rigen ajustes por delincuente habitual / de dedicación permanente a la delincuencia / delincuente habitual armado. [If any of these adjustments applies, identify the convictions or facts, which are believed to trigger the adjustment and include the final offense level and/or criminal history category.]*

H. El rango consultivo de plazos de reclusión carcelaria que resulta de estos cálculos es de \_\_\_\_\_ a \_\_\_\_\_ meses. Sin embargo, a fin de lograr la mayor exactitud posible en el cálculo, dado que aún no se ha definido la categoría de antecedentes penales, el (los) nivel(es) delictivo(s) estimado(s) anteriormente podría(n) resultar en un rango de \_\_\_\_\_ meses (nivel inferior de la Categoría I) a \_\_\_\_\_ meses (nivel superior de la Categoría VI). En todo caso, el rango condenatorio no podrá exceder el plazo máximo acumulado previsto por ley para el(los) delito(s) por el(los) cual(es) se condenará al acusado.

I. Conforme a la Pauta 5E1.2, el nivel delictivo estimado anteriormente resultaría en un rango de multas que oscila entre US\$ \_\_\_\_\_ y US\$ \_\_\_\_\_, más los intereses y las penalizaciones correspondientes.

J. Conforme a la Pauta 5D1.2, si el juez impusiera un plazo de excarcelación supervisada, dicho plazo sería de *[insert if applicable: mínimo \_\_\_\_\_ años, más no podrá exceder los \_\_\_\_\_ años.]*

K. *[Describe any restitution orders or conditions required by guideline § 5E1.1.]*

Las partes entienden que, si bien el Juez considerará el estimado hecho por las partes, el Juez deberá llegar a sus propias conclusiones en cuanto al rango condenatorio. En dicho proceso, el Juez no está obligado a aceptar la opinión de ninguna de las partes.

Ningún estimado hecho por las partes del rango condenatorio según las Pautas condenatorias federales impide que cualquiera de las partes le solicite al Juez, en el contexto general de las pautas, que se aparte de dicho rango condenatorio en la audiencia para la imposición de la pena, si dicha parte considera que las pautas condenatorias autorizan específicamente un desvío de las mismas o si considera que existen circunstancias agravantes o atenuantes de tipo tal o en medida tal que no se tuvieron en cuenta en grado suficiente por la Comisión federal de imposición de penas al formular las Pautas Condenatorias de carácter consultivo. Asimismo, ningún estimado hecho por las partes en relación con el rango condenatorio le impide a las partes solicitarle al juez que deje de lado del todo las Pautas condenatorias consultivas e imponga una pena conforme a otros factores estipulados en el Capítulo 18 del Código Federal, Artículo 3553. *[Adjust or*

*delete language to account for any Rule 11(c)(1)(C) agreement or other agreement as to departures or variances.]*

Las partes entienden que el Juez tiene la libertad, después de tener en cuenta y hacer regir todos los factores del Capítulo 18 del Código Federal, Artículo 3553, de imponer una pena razonable que considere adecuada en ejercicio de su criterio y que dicha pena podrá ser inferior a la recomendada por las Pautas condenatorias consultivas (en cuanto al plazo o al tipo de sanción), dentro del rango condenatorio recomendado, o superior al mismo, inclusive hasta un plazo de reclusión que no exceda el máximo previsto por ley, indistintamente de todo cálculo u opinión de las partes referente a cualquiera de los factores del Capítulo 18 del Código Federal, Artículo 3553. *[Insert if Rule 11(c)(1)(C) agreement: Sin embargo, debido a que este convenio se celebra de conformidad con la Regla 11 (c)(1)(C), el juez quedará obligado a ceñirse a lo convenido entre las partes una vez que haya aceptado el convenio para aceptación de culpabilidad. Por otra parte, si el juez decidiera imponer una pena distinta a la acordada por las partes en virtud del presente convenio, el juez deberá permitirle a las partes retirarse del convenio antes de imponer dicha pena.]*

## VII. TOTALIDAD DEL CONVENIO

El presente documento constituye el convenio entre las partes en su totalidad. No existen otras promesas, convenios (ni "convenios paralelos"), términos, condiciones, entendimientos, ni aseveraciones, ni explícitos ni implícitos. Al celebrar este convenio, ni la Fiscalía Federal, ni el Acusado, cuenta ni ha contado con términos, promesas, condiciones, ni aseveraciones, que no se hayan afirmado expresamente en el presente convenio.

Fecha: \_\_\_\_\_

\_\_\_\_\_ *[insert name]*

Acusado

Fecha: \_\_\_\_\_

\_\_\_\_\_ *[insert name]*

Abogado defensor del acusado

Fecha: \_\_\_\_\_

\_\_\_\_\_ *[insert name]*

Abogado de la Fiscalía

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## STATEMENT BY DEFENDANT IN ADVANCE OF PLEA OF GUILTY

\_\_\_\_\_  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Case No. \_\_\_\_\_

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

I. \_\_\_\_\_

Defendant(s).

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## STATEMENT BY DEFENDANT IN ADVANCE OF PLEA OF GUILTY

I acknowledge and certify that I have been advised of and understand the following facts and rights, that all representations contained in this document are true and correct, and that my attorney has assisted me as I have reviewed and completed this document.



1. The nature of the charge(s) against me has/have been explained to me by my attorney. I have had an opportunity to discuss with my attorney both the nature of the charge(s) and the elements which the government is required to prove.

2. I know that when the Court sentences me, the Court will consider many factors. These factors are listed in 18 U.S.C. § 3553 and include (a) the nature and circumstances of the offense and my personal history and characteristics, (b) the need for a sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford deterrence, protect the public, and provide me with needed training, care or correctional treatment in the most effective manner, (c) the kinds of sentences available to the court, (d) the advisory sentencing guidelines established by the U.S. Sentencing Commission, (e) the pertinent policy statements of the U.S. Sentencing Commission, (f) the need to avoid unwarranted sentence disparity among defendants with similar records who have been found guilty of similar conduct, and (g) the need to provide restitution. No single factor is controlling or determinative. I recognize that it is possible that the Court could, after considering these factors, impose any sentence in my case, including one which is as severe as the maximum term of imprisonment, the maximum fine, full restitution (if applicable), the maximum term of supervised release, and a special assessment, all as set out in paragraph 3 below.

3. I know that the following penalties may be imposed as a result of my guilty plea(s):  
Count \_\_\_\_\_

a. Imprisonment for a term of *[insert if applicable: not less than \_\_\_\_\_ years, but]* not more than \_\_\_\_\_ years;

b. A term of supervised release of *[insert if applicable: not less than \_\_\_\_\_ years, but]* not more than \_\_\_\_\_ years, pursuant to 18 U.S.C. § 3583;

c. A fine of not more than \$ \_\_\_\_\_, pursuant to the statute that I admit I violated and/or the alternative fine schedule set out at 18 U.S.C. § 3571;

d. Restitution to the victim(s) of my crime(s) of not more than \$ \_\_\_\_\_, pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664;

e. A special assessment of \$ \_\_\_\_\_, pursuant to 18 U.S.C. § 3013;

*[REPEAT a. THROUGH e. FOR ALL REMAINING COUNTS. IF A CRIMINAL FORFEITURE COUNT IS INCLUDED, SPECIFY THE PROPERTY SUBJECT TO FORFEITURE UNDER THAT COUNT.]*

4. I know that if I am convicted of more than one count, the sentences imposed may be either concurrent (served at the same time) or consecutive (served separately or back-to-back) unless the statutory penalty for an offense of conviction expressly requires that a sentence be imposed to run consecutively.

5. I know that in addition to any punishment that the Court may impose, there are collateral consequences to pleading guilty to a crime. These consequences are neither imposed nor controlled by the Court. For example, pleading guilty may result in a loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury. And, if I am not a citizen of the United States, these consequences may include deportation from the United States or indefinite confinement if there is no country to which I may be deported, denial of the right to enter the United States in the future, and denial of citizenship.

6. I know that if I am given a term of supervised release as a part of my sentence, that supervised release will only begin to run upon my release from custody on all terms of imprisonment imposed by this and any other courts. I understand that any violation of the conditions of that supervised release during its term may lead to an additional prison sentence and additional supervised release being imposed.

7. I know that there is no parole in the federal system and that I will be required to serve the entire sentence of imprisonment which may be imposed in my case, reduced only by such good time and/or program allowances as may be set by Congress and applied by the Bureau of Prisons.

8. I know that if a fine or restitution is imposed as a part of my sentence, I will be required to pay interest on any amount in excess of \$2,500, unless the fine or restitution is



paid in full before the fifteenth day after the date of the judgment or unless interest is waived by the Court.

9. I know that if a fine or restitution is imposed as a part of my sentence, I will be required to pay it in a timely manner. Failure to do so may trigger monetary penalties, collection efforts by the government, potential revocation of any probation or supervised release, and/or exposure to prosecution for “Criminal Default” under 18 U.S.C. § 3615.

10. I know that I can be represented by an attorney at every stage of the proceedings in this matter, and I know that, if I cannot afford an attorney, one will be appointed to represent me at no cost or expense to me.

11. I know that I have a right to plead “not guilty;” and I know that if I do plead “not guilty,” I can persist in that plea and demand a trial.

12. I know that I have a right to and can demand a trial by jury, and I know that if I choose to stand trial:

- a. I have a right to the assistance of an attorney at every stage of the proceeding;
- b. I have a right to see and observe the witnesses who testify against me;
- c. My attorney can cross-examine all witnesses who testify against me;
- d. I can call and present such relevant witnesses and evidence as I desire, and I can obtain subpoenas to require the attendance and testimony of those witnesses;
- e. If I cannot afford to pay witness fees and expenses, the government will pay those fees and expenses, including mileage and travel expenses, and including reasonable fees charged by expert witnesses;
- f. I cannot be forced to incriminate myself and I do not have to testify at any trial;
- g. However, I can testify at my trial if I choose to, and I do not have to decide whether or not to testify until after I have heard the government’s evidence against me;
- h. If I decide that I do not want to testify at trial, the jury will be told that no guilt or inference adverse to me may be drawn from my decision not to testify;
- i. In order for me to be convicted, the government must prove each and every element of the offense(s) with which I am charged, beyond a reasonable doubt;
- j. In order for me to be convicted, the jury must reach a unanimous verdict of guilty, meaning all jurors must agree that I am guilty; and
- k. If I were to be convicted, I could appeal both my conviction and whatever sentence the Court later imposed, and if I could not afford an appeal, the government would pay the cost of the appeal, including the cost of an appointed attorney.

13. I know that if I plead guilty, there will not be a trial of any kind.

14. I know that if I plead guilty, there will be no appellate review of the question of whether or not I am guilty of the offense(s) to which I have pled guilty. *[Use 15(a) OR 15(b) as appropriate.]*

15(a). I know that once this Court sentences me following a plea of guilty, I can only seek appellate review of the sentence imposed. While appellate review of a sentence is an important right, it is not a form of automatic resentencing by a different court. To the contrary, I understand that appellate review will not result in any resentencing or in any alteration to or reduction of my sentence in the absence of error by the original sentencing court.

15(b). I know that the terms of my plea agreement with the government contain a waiver of my right to appeal or to collaterally attack the sentence. Specifically, I have agreed *[insert the terms of any governing plea agreement provision as required by Rule 11(b)(1)(N).]* Because of this, I know that I cannot seek appellate review of the sentence imposed by the Court in this case, except in the limited circumstances, if any, permitted by my plea agreement.

16. No agreements have been reached and no representations have been made to me as to what the sentence in this case will be, except those which are explicitly detailed in the document entitled “Plea Agreement” which I and the government have signed. I further understand that any sentencing agreements and stipulations in the document entitled “Plea Agreement” are binding on the Court only if the parties ask the Court in that document to be so bound pursuant to Rule 11(c)(1)(C) and only if the Court agrees to be so bound when it accepts my guilty plea(s).

17. The only plea agreement which has been entered into with the government is that which is set out in the document entitled "Plea Agreement" which has been signed by the government and me and which I incorporate herein by reference.

18. I understand that the Court will make no decision as to what my sentence will be until a Presentence Report has been prepared by the Probation Department and received and reviewed by the Court.

19. I know that when I enter my plea(s) of guilty, the Court may ask me questions under oath about the offense(s) to which I have pled guilty. Such questions, if asked of me on the record and in the presence of my attorney, must be answered by me, and if I give false answers, I can be prosecuted for perjury.

20. I know that I have the right to ask the Court any questions that I have concerning my rights, these proceedings, and my plea(s) to the charge(s).

21. I am \_\_\_\_\_ years of age. My education consists of \_\_\_\_\_. I [can] [cannot] understand the English language. (Circle either "can" or "cannot.") I am not taking any medications which interfere with my ability to understand the proceedings in this matter or which impact or affect my ability to choose whether to plead guilty.

22. Other than the promises of the government set out in the document entitled "Plea Agreement," no promises and no threats of any sort have been made to me by anyone to induce me or to persuade me to enter my plea(s) in this case.

23. No one has promised me that I will receive probation, home confinement or any other specific sentence desired by me because of my plea(s) of guilty.

24. I have had sufficient opportunity to discuss this case and my intended plea(s) of guilty with my attorney. I do not wish to consult with my attorney any further before I enter my plea(s) of guilty.

25. I am satisfied with my attorney. I believe that I have been represented effectively and competently in this case.

26. My decision to enter the plea(s) of guilty is made after full and careful thought, with the advice of my attorney, and with full understanding of my rights, the facts and circumstances of the case, and the potential consequences of my plea(s) of guilty. I was not under the influence of any drugs, medication, or intoxicants which affect my decision-making ability when I made the decision to enter my guilty plea(s). I am not now under the influence of any such drugs, medication or intoxicants.

27. I want to plead guilty and have no mental reservations about my decision.

28. Insofar as it shows my conduct, the summary of facts set out in the document entitled "Plea Agreement" is true and correct, except as I have indicated in that document.

29. I know that I am free to change or delete anything contained in this document and that I am free to list my objections and my disagreements with anything contained in the document entitled "Plea Agreement." I accept both documents as they are currently drafted.

30. I wish to plead guilty to the following charge(s): \_\_\_\_\_

(Specify which counts and relevant statute citations.)

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Defendant

I certify that I have discussed this statement and the document entitled "Plea Agreement" with the defendant. I certify that I have fully explained the defendant's rights to him or her and have assisted him or her in completing this form. I believe that the defendant understands his or her rights and these statements.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Attorney for Defendant



**DECLARACIÓN DEL ACUSADO EN ANTICIPACIÓN DE  
SU DECLARACIÓN DE CULPABILIDAD**

EN EL TRIBUNAL DE PRIMERA INSTANCIA  
DE LOS ESTADOS UNIDOS PARA EL DISTRITO DE COLORADO

Acción Criminal Numero \_\_\_\_\_

ESTADOS UNIDOS DE AMÉRICA,

Demandante(s),

Contra

1. \_\_\_\_\_

Acusado(s).

**DECLARACIÓN DEL ACUSADO EN ANTICIPACIÓN DE  
SU DECLARACIÓN DE CULPABILIDAD**

Afirmo y certifico que yo he sido advertido de y que comprendo los siguientes hechos y derechos, que todas las representaciones contenidas aquí son ciertas y correctas, y que mi abogado me ha ayudado a mí al leer y completar este formulario.

1. La naturaleza del cargo (o los cargos) contra mí se me ha explicado a mí por mi abogado y por el Juez. Yo he tenido la oportunidad de discutir la naturaleza del cargo (o de los cargos) con mi abogado y con el Juez, y el cargo (o los cargos) y los elementos que al Gobierno se le obliga a comprobar.

2. Comprendo que cuando el Juez me imponga la sentencia, el Juez considerara muchos factores. Estos factores se detallan en el Título 18 del Código de los Estados Unidos, Sección 3553 e incluyen (a) la naturaleza y circunstancias del delito y mi historia personal y características, (b) la necesidad de que la sentencia refleje la seriedad del delito, promover respeto por la ley, proporcionar un castigo justo, proporcionar disuasión, proteger al publico, y darme a mi la capacitación necesaria, atención o tratamiento correccional de la manera mas efectiva, (c) las índoles de sentencias disponibles al juez, (d) las pautas de sentencias consultivas establecidas por la Comisión de Sentencias de los Estados Unidos, (e) las declaraciones de política pertinentes establecidas por la Comisión de Sentencias de los Estados Unidos en conformidad con el Título 28 del Código de los Estados Unidos, (f) la necesidad de evitar disparidad sin mérito de sentencias entre acusados con antecedentes similares quienes han sido declarados culpable de conducta similar, y (g) la necesidad de proporcionar indemnización. Ningún factor por sí solo controla ni determina. Yo entiendo que es posible que el Juez pueda, después de considerar estos factores, imponer cualquier sentencia en mi caso, incluso alguna que sea tan grave como el plazo máximo de encarcelamiento, la multa máxima, y la indemnización total (si se aplica), el plazo máximo de libertad supervisada después de la prisión, y un recargo especial, todo tal como se indica en el párrafo 3 a continuación.

3. Comprendo que las siguientes penalidades se me podrán imponer a mí como resultado de mi declaración (o mis declaraciones) de culpabilidad:

Cargo \_\_\_\_\_

a. Encarcelamiento por un plazo [*insertar si se aplica: mínimo de \_\_\_\_\_ anos, pero hasta un*] máximo de \_\_\_\_\_ anos;

b. Un plazo de libertad supervisada después de la prisión de [*insertar si se aplica: m(niño de \_\_\_\_\_ anos, pero hasta un*] máximo de \_\_\_\_\_ anos, en conformidad con el Título 18 del Código de los Estados Unidos, Sección 3583;

c. Una multa de hasta \$ \_\_\_\_\_, en conformidad con el estatuto que yo admito haber violado y/o el pago alternativo de multas tal como se establece bajo el Título 18 del Código de los Estados Unidos, Sección 3571;



d. Indemnización a la víctima de mi delito por basta un máximo de \$ \_\_\_\_\_ en conformidad con el Título 18 del Código de los Estados Unidos, Sección 3663, 3663A y 3664;

e. Un recargo obligatorio especial de \$100, en conformidad con el Título 18 del Código de los Estados Unidos, Sección 3013;

*[REPETIR a. HASTA e. POR TODOS LOS DEMAS CARGOS. SI SE INCLUYE UNA DEMANDA PENAL DE DECOMISO, ESPECIFICAR LA PROPIEDAD SUJETA AL DECOMISO BAJO DICHO CARGO.]*

4. Comprendo que si soy condenado de mas de un cargo, las condenas podrán ser simultaneas (que se sirven al mismo tiempo) o consecutivas (que se sirven de forma separada una tras otra) a menos que la penalidad estatutaria por un delito de la condena expresamente requiere que una sentencia sea impuesta para servirse de forma consecutiva.

5. Comprendo que además de cualquier castigo que el Juez pueda imponer, hay consecuencias colaterales al declararme culpable de un delito. Estas consecuencias ni son impuestas ni controladas por el Juez. Por ejemplo, declararse culpable puede resultar en la perdida de derechos civiles, incluyendo pero no limitado a los derechos de poseer armas de fuego, de votar, de mantener un puesto oficial por elecciones, y de servir como integrante en un jurado. Y si no soy ciudadano de los Estados Unidos, estas consecuencias pueden incluir la deportación de los Estados Unidos o encarcelamiento indefinido sino hay ningún país al cual yo pueda ser deportado, que se me niegue el derecho de entrar a los Estados Unidos en el futuro, y que se me niegue la ciudadanía.

6. Yo sé que si se me impone un plazo de libertad supervisada como parte de mi sentencia, que dicha libertad supervisada solamente empieza a correr cuando yo salga de la prisión por todos los términos de encarcelamiento impuestos por este y cualquier otro tribunal. Yo entiendo que cualquier violación de las condiciones de dicha libertad supervisada después de la prisión durante su plazo puede resultar en una sentencia adicional en la prisión y que se imponga un plazo de libertad supervisada adicional.

7. Yo entiendo que no hay ninguna salida anticipada en el sistema federal y que yo tendré que servir la condena entera en la prisión, la cual se pueda imponer en mi caso, reducida únicamente por el buen tiempo y/o reducciones de programas tal como se puedan establecer por el Congreso y tal como sean aplicados por el Departamento de Prisiones.

8. Yo sé que si se impone alguna multa o indemnización como parte de mi sentencia, yo tendré que pagar intereses por cualquier cantidad en exceso de \$2,500 a menos que la multa o la indemnización se pague en total antes del decimoquinto día después de la imposición de la sentencia o a menos que el interés sea exonerado por el Juez.

9. Yo sé que si se impone alguna multa o indemnización como parte de mi sentencia, yo tendré que pagarlo de forma sin demora. La falta de hacerlo podrá iniciar penalidades monetarias, esfuerzos de recaudación por el gobierno, posible revocación de cualquier libertad condicional o libertad supervisada, y/o ser expuesto al enjuiciamiento por "Falta Penal" bajo el Título 18 del Código de los Estados Unidos, Sección 3615.

10. Comprendo que yo puedo ser representado por un abogado en cada etapa de este procedimiento, y sé que si no puedo pagar los costos de un abogado, uno será designado para representarme a *mi* sin ningún costo ni gasto para *mi*.

11. Comprendo que tengo el derecho de declararme "no culpable" y sé que si me declaro "no culpable," yo puedo persistir con dicha declaración y exigir un juicio.

12. Comprendo que tengo el derecho de un juicio ante un jurado, y comprendo que si yo decido presentarme ante un juicio:

- Tengo el derecho de la asistencia de un abogado en toda etapa del procedimiento;
- Tengo el derecho de ver y de observar a los testigos que atestigüen contra *mi*;
- Mi abogado puede contra interrogar a todo testigo que atestigue contra *mi*;
- Puedo citar a los testigos que yo quiera, y puedo obtener citaciones del Juez para obligar la presencia y el testimonio de dichos testigos;
- Si no tengo dinero para pagar los costos que incurran los testigos, el gobierno pagara dichos costos, incluso los costos de por milla y viáticos, e incluso los honorarios razonables que cobran los testigos periciales;

f. No puedo ser forzado a incriminarme a mi mismo, y no tengo que dar testimonio en ningún juicio;

g. Sin embargo, yo puedo atestiguar en mi juicio si yo deseo hacerlo, y no tengo que decidir si voy a atestiguar o no sino basta después de haber escuchado las pruebas del gobierno contra *mi*;

h. Si yo decido que no deseo atestiguar, al jurado se le indicara que no puede llegar a ninguna conclusión adversa hacia *mi* por el hecho de mi falta de atestiguar;

i. Para que yo sea condenado culpable, el Gobierno debe comprobar cada y todo elemento del delito acusado contra *mi* mas alía de una duda razonable;

j. Para que yo sea condenado culpable, el jurado debe llegar a un veredicto unánime de culpabilidad; y

k. En caso de fallo de culpabilidad, yo podría apelar mi condena, y si no tengo dinero para pagar los costos de la apelación, el Gobierno pagaría los costos de la apelación, incluyendo el costo de un abogado designado.

13. Yo sé que si me declaro culpable, no habrá ningún juicio de ninguna clase.

14. Yo sé que si me declaro culpable, no habrá ningún análisis de apelación de la duda de si soy culpable o no del delito por el cual me haya declarado culpable.

[Use 15(a) o 15(b) tal como sea indicado.]

15.(a) Comprendo que cuando el Juez me impone la sentencia después de una declaración de culpable, yo solamente puedo pedir un análisis de apelación de la sentencia impuesta. Mientras que un análisis de apelación de una sentencia es un derecho importante, no es una forma automática de reimposición de la sentencia por un Juez diferente. Al contrario, yo entiendo que el análisis de apelación no resultara en ninguna reimposición de la sentencia ni ninguna alteración ni reducción de mi sentencia en la ausencia de algún error por el juez original que impone la sentencia.

15.(b) Comprendo que los términos de mi acuerdo declaratorio con el gobierno contienen una renuncia de mis derechos de apelación o de refutar la sentencia de manera colateral. Específicamente, yo he llegado al acuerdo de *[Insertar los términos de cualquier provisión gobernante del acuerdo declaratorio tal como se requiere por la Regia 11(b)(1)(N).]* Debido a esto, yo sé que no puedo pedir un análisis de apelación de la sentencia impuesta por el Juez en este caso, salvo bajo las circunstancias limitadas, si existen, permitidas bajo mi acuerdo declaratorio.

16. No se ha celebrado ningún acuerdo, y no se me ha hecho a mí ninguna representación en cuanto a lo que será la sentencia en este caso, salvo lo que se indica expresamente en el documento titulado "Acuerdo Declaratorio", el cual el fiscal del gobierno y yo hemos firmado. Comprendo además que cualquier acuerdo y estipulación en el documento titulado "Acuerdo Declaratorio" comprometen al Juez únicamente si las partes le piden al Juez en dicho documento que se comprometa de tal forma en conformidad con la Regia 11(c)(1)(C), y únicamente si el Juez conviene comprometerse de tal forma cuando el acepte mi declaración de culpabilidad.

17. El único acuerdo declaratorio que se ha celebrado con el gobierno es aquel que se establece en el documento titulado "Acuerdo Declaratorio", el cual ha sido firmado por el fiscal del gobierno y por mí, y el cual incorporo aquí por referendo.

18. Comprendo que el Juez no puede tomar ninguna decisión en cuanto a lo que será mi sentencia sino basta que se prepare un Informe Previo a la Sentencia de parte del Departamento de Libertad Condicional y se haya recibido y analizado por el Juez.

19. Comprendo que cuando yo me declare culpable, el Juez me podrá hacer preguntas bajo juramento sobre el delito por el cual se eleva esta declaración de culpabilidad. Tales preguntas, si se me preguntan para el acta y en la presencia de mi abogado, se deben contestar por mí, y si doy declaraciones falsas, puedo ser procesado por perjurio.

20. Yo sé que tengo el derecho de preguntarle al Juez cualquier pregunta que yo tenga referente a mis derechos, estos procedimientos, y mis declaraciones de culpabilidad por los cargos.

21. Yo tengo \_\_\_\_\_ arios de edad. Mi educación consiste de \_\_\_\_\_. Yo [puedo] [no puedo] entender el idioma ingles. (Marque con un círculo "puedo" o "no puedo") No estoy tomando ningún medicamento que impida mi capacidad de entender los



procedimientos en esta causa ni que tengan impacto ni afecten mi capacidad de tomar la decisión de declararme culpable.

22. Fuera de las promesas del gobierno establecidas en el documento titulado "Acuerdo Declaratorio", nadie me ha hecho a mí ninguna promesa y ninguna amenaza de ninguna clase para inducirme o para persuadirme a declararme culpable en este caso.

23. Nadie me ha prometido que recibiré libertad condicional ni ninguna otra forma de clemencia debido a mi declaración (o mis declaraciones) de culpabilidad.

24. He tenido suficiente oportunidad de discutir este caso y mi intención de declararme culpable con mi abogado. No deseo consultar mas con mi abogado antes de declararme culpable.

25. Estoy satisfecho con mi abogado. Creo que he sido representado efectivamente y competentemente en este caso.

26. Mi decisión de elevar esta declaración (o declaraciones) de culpabilidad se hizo después de plena y cautelosa consideración, con el consejo de mi abogado, y con pleno conocimiento de mis derechos, los hechos y circunstancias del caso y las posibles consecuencias la declaración (o declaraciones) de culpabilidad. No estaba bajo la influencia de ninguna droga, medicamento ni sustancia embriagante cuando tome la decisión de elevar la declaración (o declaraciones) de culpabilidad, y en este momento no estoy bajo la influencia de ninguna droga, medicamento, ni sustancia embriagante.

27. Deseo declararme culpable y no tengo ninguna duda con respecto a mi decisión.

28. En cuanto a lo que se indica de mi conducta, el resumen de los hechos contenido en el documento titulado "Acuerdo Declaratorio" es cierto y correcto, salvo como yo haya indicado al contrario en dicho documento.

29. Comprendo que yo tengo la libertad de cambiar o de tachar cualquier cosa contenida en esta declaración y que yo tengo la libertad de detallar mis objeciones y mis desacuerdos con cualquier cosa contenida en el documento titulado "Acuerdo Declaratorio". Yo acepto ambos documentos tal como están redactados actualmente.

30. Deseo declararme culpable del siguiente cargo (o cargos): \_\_\_\_\_

(Especificar cuales cargos y las referencias estatutarias relevantes.)

Firmado este día \_\_\_\_\_ de \_\_\_\_\_.

\_\_\_\_\_  
Acusado

Yo certifico que he discutido esta declaración y el documento titulado "Acuerdo Declaratorio" con el Acusado. Certifico que yo le he explicado al acusado sus derechos plenamente, y que le he ayudado a completar este formulario. Creo que el acusado comprende sus derechos y estas declaraciones.

Firmado este día \_\_\_\_\_ de \_\_\_\_\_.

\_\_\_\_\_  
Abogado del Acusado

### CASE CAPTION (CRIMINAL)

\_\_\_\_\_  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Case No.: \_\_\_\_\_  
UNITED STATES OF AMERICA,



Plaintiff,

v.

1.

2.

3.

Defendant.

(Rev. 04/15/02)

**NOTICE OF AVAILABILITY OF AND  
CONSENT TO EXERCISE OF JURISDICTION  
BY UNITED STATES MAGISTRATE JUDGE**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_  
Plaintiff(s),

v.

Defendant(s).

**NOTICE OF AVAILABILITY OF AND  
CONSENT TO EXERCISE OF JURISDICTION  
BY UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and D.C.COLO.LCivR 72.2, you are hereby notified that a United States magistrate judge of this district court is available to handle all dispositive matters in this civil action, including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge, however, is permitted only if all parties voluntarily consent and the district judge orders the reference to a magistrate judge under 28 U.S.C. § 636(c).

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

Pursuant to D.C.COLO.LCivR 72.2, no district judge or magistrate judge, court official, or court employee may attempt to influence the granting or withholding of consent to the reference of any civil matter to a magistrate judge under this rule.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the appropriate United States Court of Appeals in the same manner as an appeal from any other judgment of a district court.

If this civil action has been referred to a magistrate judge to handle certain nondispositive matters, that reference shall remain in effect. Upon entry of an order of reference pursuant to 28 U.S.C. § 636(c), the civil action will be assigned to the magistrate judge then assigned to the case.

CONSENT TO THE EXERCISE OF JURISDICTION BY A  
UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), Fed. R. Civ. P. 73, and D.C.COLO.LCivR 72.2, the parties in this civil action hereby voluntarily consent to have a United States magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

Signatures	Party Represented	Date
Print _____	_____	_____
Print _____	_____	_____
Print _____	_____	_____

(Rev. 12/01/11)

JUDICIAL OFFICER INITIALS

JUDICIAL OFFICER INITIALS

Chief Judge Wiley Y. Daniel	WYD
Senior Judge Richard P. Matsch	RPM
Senior Judge John L. Kane	JLK
Senior Judge Lewis T. Babcock	LTB
Judge Marcia S. Krieger	MSK
Judge Robert E. Blackburn	REB
Judge Philip A. Brimmer	PAB
Judge Christine M. Arguello	CMA
Judge William J. Martinez	WJM
Judge R. Brooke Jackson	RBJ
Magistrate Judge Michael J. Watanabe	MJW
Magistrate Judge Boyd N. Boland	BNB
Magistrate Judge Craig B. Shaffer	CBS
Magistrate Judge Michael E. Hegarty	MEH
Magistrate Judge Kristen L. Mix	KLM
Magistrate Judge Kathleen M. Tafoya	KMT
Magistrate Judge David L. West	DLW
Magistrate Judge Gordon P. Gallagher	GPG
Senior Circuit Judge David M. Ebel	DME

(Rev. 12/01/11)

ADMINISTRATIVE ORDER 2007-6

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF )  
RULES OF PROFESSIONAL CONDUCT ) Administrative Order 2007-6

D.C.COLO.LCivR 83.4 and D.C.COLO.LCrR 57.6 set forth the standards of professional responsibility applicable in this court. Those standards incorporate the Colorado Rules of Professional Conduct, as adopted by the Colorado Supreme Court, en banc, on April 12, 2007, and scheduled to take effect January 1, 2008. This court, however, will not incorporate or adopt the following provisions adopted by the Colorado Supreme Court:

- (1) Colo. RPC 1.2(c) (limiting scope of representation);
- (2) Colo. RPC 4.2, Comment [9A] (communication with person to whom counsel is providing limited representation);
- (3) Colo. RPC 4.3, Comment [2A] (dealing with person to whom counsel is providing limited representation); and
- (4) Colo. RPC 6.5 - Nonprofit and Court-Annexed Limited Legal Services Programs (*See Comment [2] [“A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client’s informed consent to the limited scope of the representation. See Rule 1.2(c).”]*)

Those rules were adopted to permit limited representation by counsel. They are not consistent with Fed. R. Civ. P. 11 and are also inconsistent with the view of the judges of this court concerning the ethical responsibility of members of the bar of this court.

Additionally, the Colorado Supreme Court adopted on April 12, 2007, Colo. RPC 1.16(b)(1) - Declining or Terminating Representation by Counsel - Permissive Withdrawal. The rule is inconsistent with D.C.COLO.LCivR 83.3D and D.C.COLO.LCrR 57.5D, Withdrawal of Appearance.

Finally, the Colorado Supreme Court adopted on April 12, 2007, Colo. RPC 4.4(b) - Respect for Rights of Third Persons - Inadvertent Disclosure. This court will not require adherence to Rule 4.4(b). Rule 26 of the Federal Rules of Civil Procedure and interpretive case law provide comprehensive procedures regarding the issue of inadvertent production of privileged and protected information. Accordingly, it is now

ORDERED that the above described changes to the Colorado Rules of Professional Conduct are not applicable:

- a) in this court; and
- b) in the United States Bankruptcy Court for the District of Colorado in adversary proceedings or matters governed by Fed. R. Bankr. P. 9014. In addition, any limitation in the scope of representation of a Debtor, whether in a bankruptcy case or adversary proceeding, shall be disclosed in the statement required by 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016(b).

This Administrative Order supersedes Administrative Order 1999-6 and shall take effect January 1, 2008.

Dated this 15th of October, 2007.

BY THE COURT:

s/ Edward W. Nottingham

Edward W. Nottingham, Chief Judge

### FAST TRACK NOTICE OF DISPOSITION

#### IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

CASE NO.  
UNITED STATES OF AMERICA,  
Plaintiff,

v.  
[DEFENDANT],  
Defendant.

### FAST TRACK NOTICE OF DISPOSITION

Defendant [insert name], by and through undersigned counsel, advises that [he/she]



desires to plead guilty to the indictment [Specify counts if plea will be to less than all counts of the charging document]. [He/She] asks that the trial date be vacated and that this matter be scheduled for a change of plea hearing.

This is a Fast Track case. The parties believe the defendant may be, under the terms of the program, eligible for a sentence of time served on the same date as the change of plea hearing.

Accordingly, defendant requests that the Court conduct the sentencing hearing on the date of the change of plea, and that the combined hearing be set no later than eight (8) weeks from the date of this Notice. The defendant waives the minimum notice and time for objection requirements of Rule 32 (e) and (f) of the Federal Rules of Criminal Procedure and agrees to the preparation of a modified presentence report before his plea of guilty. [He/She] also consents to the disclosure of the report to the Court, the government, and to his attorneys before the change of plea.

Undersigned counsel has conferred with Assistant United States Attorney [insert name] who has agreed to a modified presentence investigation report and to waiver of the minimum notice and time for objection requirements of Rule 32 (e) and (f), Fed. R. Crim. P., on behalf of the United States.

Respectfully submitted,

*[Insert firm name if applicable]*

s/ \_\_\_\_\_

[Name of Attorney for Defendant]

[Address, Telephone, Fax]

Attorney for Defendant

### CERTIFICATE OF SERVICE

I hereby certify that on [date], I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

[Insert name], AUSA

email: [Insert email address]

and I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participant in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

[Defendant (via Mail)

[Address]

Elizabeth Oppenheimer, USPO (via email)

*[Insert firm name if applicable]*

s/ \_\_\_\_\_

[Name of Attorney for Defendant]

[Address, Telephone, Fax]

Attorney for Defendant



**ELECTRONIC CASE FILING  
PROCEDURES  
FOR THE  
DISTRICT OF COLORADO  
(CIVIL AND  
CRIMINAL CASES)**

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Effective December 1, 2010

with updates through

January 20, 2013



RECORDS OF THE  
COURT  
FOR THE  
DISTRICT OF COLUMBIA  
IN THE  
YEAR 1882

OF THE DISTRICT OF COLUMBIA

AND THE DISTRICT OF

THE DISTRICT OF

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# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

## SECTION I. CIVIL CASES

### I. ELECTRONIC CASE FILING SYSTEM

#### ECF 1.1. In General

Unless otherwise permitted by these administrative procedures, by local rules, or by a general order of the court, all documents filed in civil cases, shall be filed electronically in a portable document format (PDF) using the Electronic Case Filing System (ECF) connected through the court's web site at <http://www.cod.uscourts.gov>.

#### ECF 1.2. Exceptions

**A. Materials That Cannot Be Converted to Electronic Form.** Materials that cannot be converted to electronic form (e.g., videotape, audiotape, etc.) may be filed by delivering them directly to the clerk's office and following Section 5.8 of these procedures. For brevity, these procedures sometimes refer to these materials as "conventionally submitted materials."

**B. Initiating Documents.** Complaints, petitions, notices of removal, civil cover sheets, summonses, and other case-initiating documents are governed by Section 5.4 of these procedures.

**C. Restricted Cases.** Cases commenced under restriction pursuant to statute or restricted pursuant to order in accordance with the local rules of this court shall be filed in accordance with Section VI.

**D. Restricted Documents and Documents for In Camera Review.** Such documents shall be filed in accordance with Section VI.

**E. Prisoner *Pro Se*.** Prisoner *pro se* parties may not use ECF and must file their documents in paper. Their documents will be scanned and uploaded into ECF by court staff.

**F. Non-Prisoner *Pro Se*.** Unless they comply with Section 3.2 (B) of these procedures, non-prisoner *pro se* parties may not use ECF and must file their documents in paper. Their documents will be scanned and uploaded into ECF by court staff.

**G. Application for Attorney to File in Paper.** An attorney may apply for permission to file documents in paper by following Section II. of these procedures.

(Amended, effective December 1, 2011.)

#### ECF 1.3. Official Files and Records

**A. Files.** The clerk's office will not maintain a paper court file in any civil case commenced after June 20, 2005, except as otherwise provided in these procedures.

**B. Official Record.** The official court record from June 20, 2005, forward shall be the electronic file maintained on the court's servers and any documents or exhibits which these procedures allow to be filed by delivery to the clerk's office and are not scanned and posted to ECF.



**C. Filing for Purposes of Rules.** Electronic transmission of a document to ECF consistent with these procedures, together with the transmission of a Notice of Electronic Filing (NEF) that the court's system generates from the electronic submission, constitutes filing of the document for purposes of the Federal Rules of Civil Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79.

**D. Filer Required to Maintain Certain Documents.** Documents (a) that are electronically filed and (b) that require signatures, other than or in addition to that of the filer (e.g., affidavits), must be maintained in paper form by the filer until two years after all time periods for appeal expire and all appeals are final. At the request of the court, the filer must provide the documents for review.

**E. Legible.** Filers are required to verify that all documents are legible before the documents are filed electronically with the court.

**F. Scanning.** Filers shall only scan documents unavailable in an electronic format. Documents shall be converted to PDF directly from the software application in which they were created (e.g., Word, WordPerfect, Excel). Documents converted electronically shall be text-searchable.

#### **ECF 1.4. System Availability**

**A. Schedule.** ECF will be available 24 hours a day, seven days a week. If maintenance or repairs require a period of downtime, advance notice will be provided on the court's web site.

**B. ECF Help Desk.** The ECF help desk is supported between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time. The help desk may be contacted by:

1. telephone at 303-335-2050 or 1-866-365-6381; or
2. electronic mail (e-mail) at [cod\\_cmecf@cod.uscourts.gov](mailto:cod_cmecf@cod.uscourts.gov).

## **II. APPLICATION FOR ATTORNEY TO FILE IN PAPER FORMAT**

#### **ECF 2.1. Permission Required**

In exceptional circumstances, an attorney may apply to a judicial officer designated by the Chief Judge for permission to file documents in paper format.

#### **ECF 2.2. Application**

An application for leave to file in paper format is available on the court's web site at <http://www.cod.uscourts.gov> or from the clerk's office. Applications shall be filed in paper with the clerk. See ECF Form 1.

## **III. REGISTRATION FOR PACER AND ECF**

#### **ECF 3.1. PACER Registration Required for ECF**

Documents already on the court's servers are accessed through the Public Access to Court Electronic Records ("PACER") Service Center. The Notice of Electronic Filing generated by each transmission of a document to ECF permits the filer and each recipient, without charge, to view, print, and/or download the document filed. Any subsequent use of ECF to review documents requires a PACER login, in addition to the ECF login and password issued by the court. To register for PACER, a user must complete the online form

or submit in paper a registration form available on the PACER web site (<http://pacer.psc.uscourts.gov>).

### ECF 3.2.

#### Court Registration Required for ECF

**A. Attorney Admitted to Practice in This Court** (See D.C.COLO.LCivR 83.3 A). An attorney who is a member in good standing of the bar of this court shall, register as a participant in ECF by completing the ECF Attorney Registration process on the court's web site. After the registration is approved by the court, the clerk's office will send the attorney's ECF login to the attorney's email account. **The ECF account is the possession of the attorney, not the firm, and responsibility for maintenance is the attorney's.**

Attorneys registered for ECF and representing themselves *pro se* shall use ECF to file documents unless authorized to file conventionally under Section II of these procedures.

**B. Non-Prisoner Pro Se.** A non-prisoner *pro se* party may apply to register as a participant in ECF by completing an ECF Registration Form - *Pro Se* and submitting it, in paper, to the clerk's office. See ECF Form 2. *The non prisoner pro se party must have a pending case before the court.* If the applicant is approved by the court, *the non-prisoner pro se applicant will be required to take ECF training before a login is issued.* After successful training, the clerk's office will send the applicant's ECF login to the applicant's e-mail account.

1. Upon (1) closure of the case for which access is granted (and the expiration of all appeal periods) or (2) entry of appearance by counsel on behalf of the *pro se* party, the account will be deactivated.

2. If a non-prisoner *pro se* party was previously granted e-filing status in a case and it was deactivated based upon III.B.2.a. and (1) has a new case or (2) counsel no longer represents them, they shall complete a new *Pro Se* ECF Registration Form indicating the reason for reactivation. For reactivation, the non-prisoner *pro se* will not be required to take training.

**C. Consent to Electronic Service.** Registration as a participant in ECF shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Civil Procedure.

ECF participants shall verify that any security filtering software on the user's electronic mail system will not inhibit electronic service from the court.

**D. Revocation of ECF Registration and Access.** The court may for good cause revoke the ECF registration of an attorney or nonprisoner *pro se* party.

## IV. LOGIN AND PASSWORD

### ECF 4.1.

#### Change of Password

After registering, an attorney or non-prisoner *pro se* party may change his or her ECF password. Directions on how to do so may be found in the ECF User's Manual on the court's web site at <http://www.cod.uscourts.gov>.

### ECF 4.2.

#### Restrictions on Use

**A.** No attorney shall permit or cause to permit his or her login and password to be used by anyone other than a person whom the attorney has authorized to file in the attorney's name.

**B.** A non-prisoner *pro se* party shall not permit or cause to permit any other person to use his or her login or password.

**ECF 4.3.**  
**Responsibility and Sanctions**

An attorney or non-prisoner *pro se* party is responsible for all documents filed using his or her login and password, and is subject to sanctions under Fed.R.Civ.P. 11.

**ECF 4.4.**  
**Security of Password**

If an attorney or non-prisoner *pro se* party believes that the security of an existing password has been compromised or that an ECF account has been misused, the attorney or non-prisoner *pro se* party must change his or her password and contact the ECF help desk immediately.

**ECF 4.5.**  
**Change of E-Mail Address**

An attorney or non-prisoner *pro se* party whose e-mail address changes, shall, within five days, (1) change the e-mail address in the account maintenance link in ECF and (2) file a notice of change of e-mail address.

(Amended, effective February 23, 2012.)

## **V. ELECTRONIC FILING AND SERVICE OF DOCUMENTS**

**ECF 5.1.**  
**In General**

**A. Filing in ECF.** All motions, pleadings, papers, applications, briefs, memoranda of law, or other documents shall be electronically filed in ECF, except as otherwise provided by these procedures. Except as otherwise provided with respect to case-initiating documents (see Section 5.4 of these procedures), e-mailing a document to the clerk's office or to a judicial officer does not constitute filing the document.

**B. Notice of Electronic Filing Required.** The notice of electronic filing will note when a pleading or paper was received in ECF.

**C. Fees Payable to Clerk.** Any fee required for filing a pleading or paper is payable to the Clerk, U.S. District Court via pay.gov, check, money order, credit card, or cash. The clerk's office will document the receipt of fees in ECF. See Section 5.4(C)(3) for payment instructions.

(Amended, effective February 23, 2012.)

**ECF 5.2.**  
**Time of Filing Documents in ECF**

**A. Document Deemed Timely.** A document will be deemed timely filed in ECF if it is filed prior to midnight (Mountain Time) on its due date unless a specific time is designated by a judicial officer in an order.

**B. ECF Technical Failure.** The clerk's office may deem the ECF site subject to a technical failure on a given day if the site is unable to accept filings. In the event of a technical failure, notice thereof will be posted on the court's web site, and documents due that day shall be due the next business day.

**C. Filer's Technical Difficulty.** A filer who cannot file a pleading or document due on a given date in ECF because of a technical difficulty not covered in Section 5.2(B) above must file as soon as practicable a motion for extension of time to file the pleading or document.



**ECF 5.3.**  
**Signatures**

**A. “s/ signature.”** Every pleading, written motion, and other paper requiring a signature must include a signature block with the filer’s name preceded by an “s/” or “/s/” and typed in the space where the signature would otherwise appear.

**B. Filer’s Signature on Case-Initiating Documents.** The login, password and “s/ signature” serves as the filer’s signature on all such documents filed with the court. It also serves as the filer’s signature for purposes of the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court.

**C. Filer’s Signature on Documents.** The login, password, and the “s/ signature” serve as the filer’s signature on all documents electronically filed with the court. They also serve as the filer’s signature for purposes of the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. The “s/signature” must match the filer name on the account for which the login and password are registered.

**D. Signature Block.** The correct format for a signature block is as follows:

s/ Pat Attorney

**Pat Attorney**

ABC Law Firm

123 South Street

Denver, CO 80202-1234

Telephone: (303) 555-5555

FAX: (303) 555-5554

E-mail: patattorney@xyz.com

Attorney for (Plaintiff/Defendant) XYZ Company

**E. Multiple Signatures.** When a stipulation or other document (e.g., a joint motion or joint exhibit list) requires two or more signatures:

1. the filer shall confirm that the content of the document is acceptable to all signatories by obtaining their ink signatures or electronic signature (by e-mail or facsimile) authorization from counsel; and
2. the filer shall file the document electronically using the “s/signature” for each signatory.

**F. Non-Attorney/Third Party Signatures.** If a document requires a signature other than that of the filer (e.g., an affidavit or declaration), the filer must obtain the ink signature of the signatory and the notary if applicable on the paper document. The filer shall then cause the “s/ signature” of the signatory and the notary if applicable to be placed on the electronic word processing version of the document. After obtaining the ink signature(s) on paper and affixing the “s/ signature(s)” to the word processing version, the filer shall cause the word processing version to be converted to PDF and posted to ECF. Scanning the document and posting the scanned result to ECF should be avoided. By filing the document, the filer certifies that the document has been signed by all necessary people, including affiant or declarant and notary if applicable, that the ink-signed version exists, and that the document will be available in the filer’s office for inspection.

1. This rule includes all notarized documents.
2. This rule includes all documents requiring the signature(s) of a non-attorney, but submitted by a filer (e.g. affiant or delcarant).
3. The electronically filed document as it is maintained on the court’s servers shall constitute the official version of that record.
4. Upon request by an attorney of record, a *pro se* party or the court, the ink signature version of the document must be made available for inspection.

(Amended, effective February 23, 2012.)

## ECF 5.4. New Cases

**A. Initiating Documents From ECF Registrants.** Case-initiating documents (e.g., complaint, petition or notice of removal), civil cover sheet, and summons (if the initiating party is requesting the clerk to issue a summons) must/shall be electronically filed in ECF utilizing the attorney case opening functionality (*see case opening user manual posted on the Court's website*). The documents must be in PDF format and must comply with the size and exhibit requirements in Section 5.8. The filing fee must be tendered when the initiating document is filed. The options for payment are via pay.gov (check or credit card), government agency exemption, filing an application to proceed pursuant to 28 U.S.C. § 1915 or 38 U.S.C. § 4323(b). **(NOTE: Once a case has been opened, if the initiating document is not filed within 24 hours, no judicial assignment will be made and the case will be closed; if the filing fee is not paid with the initiating document and is not paid within 3 hours, no judicial assignment will be made and the case will be closed.)**

Once the case is opened, initiating document has been filed and the fee has been paid, a judicial assignment will be made and the parties notified.

**B. Notice of Removal.** Pursuant to § 28 U.S.C. 1446(a), when opening a Notice of Removal case, the Notice of Removal and filing fee shall be filed in CM/ECF with the Service of Process, Pleadings, and Orders served upon the defendant from the state filing (*see training materials posted on the Court's website*). Procedurally, each of the documents should be a **separate PDF document** and be named to easily identify the document. For example, the state complaint might be named complaint.pdf, the answer might be named answer.pdf, etc. (See ECF Appendix B for a **suggested procedural guideline**.) After filing the Notice of Removal and required state documents, the removing party shall file, within fourteen days, a current register of actions (docket sheet) and shall **separately** file each pending motion, related response, reply, and brief (See ECF appendix B).

### **C. Submitting Initiating Documents by E-mail.**

1. **E-mail Address.** The e-mail address for submitting initiating documents for any civil case type other than those contained in 5.4(A) (i.e. sealed cases, applications for civil seizure warrant, application for inspection warrant, warrant for entry and investigation or warrant to determine need for and to undertake response action, motion for extension of time to file forfeiture action, certificate of judgment from another district, etc.) is [newcases@cod.uscourts.gov](mailto:newcases@cod.uscourts.gov). Except as otherwise stated in these procedures, only case-initiating documents, civil cover sheets and summons forms may be sent to this e-mail address.

2. **Subject Line.** In the subject line of the new cases e-mail, indicate that this is a new case by typing "new case" and the short case title (new case - *Jones v. Smith*) in the subject line.

3. **Filing Fee.** In the e-mail, indicate whether the filing party is:

a. paying the filing fee by cash, check, or money order separately delivered to the clerk's office and, in the case of a check or money order, made payable to "Clerk, U.S. District Court," including the short case title typed or written directly on the memo line of the check or money order;

b. paying the filing fee by a credit card not on file with the clerk's office, in which case the filing party will provide, in the e-mail or separately, the type of credit card (e.g., Visa, MasterCard, Discover Card), the name, address and telephone number of the cardholder, the card number and date of expiration; or

c. requesting waiver of the filing fee, in which case the initiating party will separately attach to the e-mail a PDF version of the application to proceed pursuant to 28 U.S.C. § 1915.

**D. Initiating Documents From Pro Se Parties Filing in Paper.** Initiating documents received from pro se parties filing in paper will be scanned and posted to ECF by court staff upon payment of the filing fee or order to commence an action.

**E. Service.** A party may not serve a complaint electronically. Service must be in accordance with Fed.R.Civ.P. 4.



**F. Summonses.** Summonses (AO 440 form) shall be electronically filed in CM/ECF as an attachment to the initiating document or received via the new cases e-mail address (see Section 5.4) and will be issued by the clerk and electronically filed in CM/ECF. (Amended, effective February 23, 2012.)

#### **ECF 5.5.**

##### **Documents that Add or Delete Attorneys**

**A. Appearance.** ECF only recognizes an appearance of an attorney or party who (1) signs a pleading/paper or (2) files an entry of appearance in ECF. Although an attorney may, under D.C.COLO.LCivR 11.1, participate in or attend a hearing by entering an oral appearance in a proceeding before a judicial officer, the attorney will not be listed as an attorney of record in ECF, and will therefore not receive any Notices of Electronic Filing, unless the attorney also signs a pleading/paper or files an entry of appearance.

**B. Withdrawal of Appearance.** Withdrawal of an appearance shall be in accordance with D.C.COLO.LCivR 83.3 D. Upon entry of the order granting withdrawal, the clerk shall terminate the movant as an attorney of record in that case in ECF.

**C. Substitution of Counsel.** Withdrawal and entry shall be done in accordance with the court's local rules and as stated above. Existing counsel may not withdraw and new counsel may not enter an appearance by filing a substitution of counsel.

#### **ECF 5.6.**

##### **Motions Practice**

**A. Motion Needing Immediate Attention.** When a motion for a temporary restraining order, preliminary injunction, or any other motion requiring immediate attention has been presented, the filer shall call the clerk's office at 303-844-3433 to notify the court of such filing.

**B. Leave of the Court.** If filing a document requires leave of the court (e.g., an amended complaint, sur-reply brief, etc.), the filer shall post the proposed document as an ECF attachment to the motion. (See Section 5.8 of these procedures concerning filing of attachments.)

#### **ECF 5.7.**

##### **Service**

**A. Certificate of Service Required.** A certificate of service shall be made part of the pleading in ECF. A certificate of service shall list all parties entitled to service or notice, and the manner in which service or notice was accomplished on each party. Sample language for a certificate of service is attached to these procedures as ECF Form 3.

**B. Notice of Electronic Filing Constitutes Service on ECF Participant.** When a pleading or document is filed in ECF, ECF will generate a Notice of Electronic Filing. If a recipient is a registered participant in ECF, the ECF-generated Notice of Electronic Filing shall constitute service of the document.

**C. Terminating and Reactivating Electronic Service.** A user receiving electronic service in a case may notify the court that service should be terminated by filing a notice stating either (1) that an order for withdrawal for the user has been granted or (2) that the party the user represents is no longer pending in the case. Counsel may file a notice re-activating service with the court in those situations where service has been terminated.

**D. Undeliverable Electronic Service.** Service on ECF participants, as required by Section 5.7(B), is considered to occur upon the successful delivery of the Notice of Electronic Filing (NEF) to the primary e-mail address in a participant's Electronic Case Filing account (ECF) account. Service upon the secondary e-mail address(es) in an ECF participant's ECF account is considered courtesy notification.

If a Notice of Electronic Filing is returned as undeliverable to the Court for the primary e-mail address of the participant, the Clerk's office will attempt to contact the participant to determine the cause for the returned notice. If the primary e-mail address has changed or delivery was impacted by an external issue (i.e., spam filtering, recipient's mail server



problem, e-mail capacity was exceeded, etc.), the Clerk's office will work with the participant to change the e-mail address and/or resend any undeliverable Notices of Electronic Filing. If the participant cannot be reached, the Clerk's office will contact co-counsel, follow procedures approved by the clerk and/or contact the chambers of the judicial officer assigned to the case, to find an appropriate way to resolve the notification issue or turn off their notification.

If a Notice of Electronic Filing is returned as undeliverable to the Court for any secondary e-mail address(es) in a participant's ECF account, those secondary e-mail address(es) will, in most instances, be automatically configured to no longer allow that email address(es) to receive notices. The participant will not be contacted by the Clerk's office.

**E. Service on Parties Not Registered for ECF.** Filers are required to serve copies of any electronically filed pleading, document, or proposed order on parties not registered for ECF according to the Federal Rules of Civil Procedure.<sup>1</sup> When serving paper copies of documents that have been electronically filed, the filer shall include a copy of the Notice of Electronic Filing to provide the recipient with proof of the filing.

**F. Three-Day Rule.** The three-day rule in Fed.R.Civ.P. 6(d) for service by mail shall apply to service by electronic means.

**G. Paper Copies.** A filer who is permitted or required to file paper copies of documents shall file with the clerk's office the original, or file by facsimile in accordance with the local rules, and must also serve paper copies on all parties entitled to service or notice.

### ECF 5.8.

#### **Oversized Electronic Documents; Exhibits to a Pleading, Motion, Brief, or Other Paper**

**A. Size.** The size limit for each PDF file/document filed in ECF shall be posted in the "Court Information" section on the opening page of the CM/ECF website. For the purpose of this procedure, each electronically filed pleading, motion, brief, or other paper, and each exhibit to the pleading, motion, brief, or paper (whether the exhibit is denominated by the filer as an exhibit, attachment, appendix, or otherwise) is a separate PDF file/document. Filing these files/documents in ECF requires use of ECF's attachment feature.

**B. Oversized Documents To Be Broken Into Separate Parts.** Any PDF file/document which exceeds the size limit shall be separated into electronic files under the size limit, and each file must then be filed in ECF.

**1. Oversized Pleading, Motion, Brief, or Other Paper.** If the oversized document is the pleading, motion, brief, or other paper being filed, the electronic PDF file containing the first part of the pleading, motion, brief, or other paper will be submitted as the main document (e.g., Brief in Support of Motion for Summary Judgment), and the electronic PDF file(s) containing the remaining part(s) of the pleading, motion, brief, or paper will each be submitted as a separate ECF attachment(s) to the main document. The filer must label each part clearly when attaching it in ECF.

**2. Oversized Exhibits to an Electronically-Filed Pleading, Motion, Brief, or Paper.** If the oversized document is an exhibit to the pleading, motion, brief, or other paper being filed, the electronic PDF files containing the parts of the exhibit will be submitted as separate, successive ECF attachments to the main document. The filer must label each part clearly when attaching it in ECF.

**C. Exhibits to an Electronically Filed Pleading, Motion, Brief, or Paper.** Each exhibit referenced in a pleading, motion, brief or other electronic filing (whether the exhibit is denominated by the filer as an exhibit, attachment, appendix, or otherwise) shall be submitted to ECF as a separate ECF attachment to the main document, regardless of the size of the file containing the exhibit. The filer must label each exhibit clearly by using the

<sup>1</sup> A filer may check ECF to see if a party is registered to receive e-mail noticing before posting a filing in ECF. This can be accomplished by clicking on the Utilities menu choice. Under the miscellaneous heading, click on the Mailings link. Click on the Mailing Info for a Case link, enter the case number and click on the Submit button. If more than one case matches the case number, a case verification window may appear. The Electronic Mail Notice List and Manual Notice List appears.

“category” and “description” boxes, either together or separately, when attaching it in ECF. The label should accurately reflect the title of the document.

**D. Sample(s).** If the filer follows these procedures and the menus in ECF, the docket entry for an oversized document or for a pleading, motion, or brief with exhibits will appear as follows (hyperlinks bolded and underscored):

Sample Docket Entry:

01/21/2005	<u><a href="#">185</a></u>	BRIEF in Support of 184 MOTION for Summary Judgment filed by Defendant Golden Rule Insurance Company Pages 1-50. (Attachments: <u><a href="#">#1</a></u> Continuation of Main Document Brief in Support of Motion for Summary Judgment Pages 51-70 <u><a href="#">#2</a></u> Affidavit of John Smith <u><a href="#">#3</a></u> Deposition Excerpts Jane Doe’s Deposition <u><a href="#">#4</a></u> Exhibit A Amended Contract Pages 1-15 <u><a href="#">#5</a></u> Exhibit A Amended Contract Pages 16-24 <u><a href="#">#6</a></u> Conventionally submitted Videotape Deposition of John Doe)(gms, ) (Entered: 01/21/2005)
------------	----------------------------	---

Sample of the screen viewed when the hyperlink to sample document #185 is clicked:

Document Selection Menu			
Select the document you wish to view.			
Document Number: 185		50 pages	2.5 mb
Attachment	Description		
1	Continuation of Main Document Motion to Suppress Statements Pages 51-70	19 pages	1.2 mb
2	Affidavit of John Smith	2 pages	0.5 mb
3	Deposition Excerpts Jane Doe's Deposition	3 pages	0.7 mb
4	Exhibit A Log Pages 1-15	15 pages	3.4 mb
5	Exhibit A Log Pages 16-24	9 pages	3.1 mb
6	Conventionally submitted Videotape Deposition of John Doe	1 page	0.2 mb
View All or Download All		99 pages	11.2 mb

**E. Color or Graphics.** Because documents scanned in color or containing graphics take longer to upload, filers must configure scanners to scan documents not in color at 200 dots per inch (dpi).

**F. Conventionally Submitted Materials.** A party may conventionally submit, without seeking leave of court, (1) exhibits or materials that cannot be converted to electronic form (e.g., video tape, audio tape, etc.) or (2) voluminous records of administrative agencies in proceedings to review actions of such agencies or of state court proceedings in habeas corpus cases, where such records are not available in electronic format. (See Section I.B.1.) Conventionally submitted materials must be submitted according to the following procedure.

1. **Cover Page.** Conventionally submitted materials shall be submitted with a paper cover page containing the case caption, a description of the materials, and a designation of the pleading or motion to which the materials relate (e.g., “Videotape Deposition of John Doe, Exhibit 7 to Plaintiff’s Motion for Summary Judgment”).



The PDF version of the cover page shall be an ECF attachment to the electronically filed pleading, motion, or paper to which the materials relate. (See samples above.) An electronic version of the cover page need not be submitted on stand alone administrative records filed conventionally. A paper copy of the Notice of Electronic Filing of the ECF attachment shall also be submitted to the clerk's office with the materials.

2. **Receipt of Conventionally Submitted Materials.** The clerk's office will note in ECF its receipt of the conventionally submitted materials with a text-only entry.

3. **Service.** The filer must serve the conventionally submitted materials on all other parties. The Notices of Electronic Filing generated by the electronic filing of the cover page and by the court's text-only entry noting receipt of the materials shall not constitute service.

(Amended, effective February 23, 2012.)

### **ECF 5.9. Trial Documents**

Trial documents such as proposed jury instructions, exhibit lists, and proposed voir dire questions shall be electronically filed in ECF so that their filing can be part of the official record. A judicial officer also may impose additional requirements to facilitate use of the documents at trial (e.g., require paper or require that a Word Perfect or Word version of the documents be submitted on disk or CD or sent to the chambers e-mail address listed in Appendix A). Any additional requirements may be found by reviewing the judicial officers' procedures on the court's web site, <http://www.cod.uscourts.gov>. All versions of trial documents, including proposed jury instructions, submitted electronically to the judicial officer pursuant to this section must be in Word or WordPerfect format.

### **ECF 5.10. Docket Entries To Be Made by Filer**

A. **Title of Docket Entry.** The filer is responsible for designating an appropriate docket entry title by using one of the docket event categories prescribed by the court. If the filer is in doubt, he or she should contact the ECF help desk for assistance.

B. **Correction of Docket Entry.** After a document is filed in ECF, corrections to the docket can only be made by the clerk's office. ECF will not permit the filer to make changes to a document or docket entry after the transaction has been submitted.

### **ECF 5.11. Correction of Filings**

A. **Documents Filed in Error in Correct Case.** A document filed in error in the correct case (e.g., wrong version of the document attached, wrong event code, etc.) shall remain a part of the record as filed. Upon discovery of an error, the filer shall immediately post the correct document in the case in ECF, and modify the title of the pleading as appropriate (e.g., Amended).

B. **Document Filed in Wrong Case.** If a document is filed in the wrong case the filer shall:

1. call the Civil Case Administrator (303/844-3433), and
2. file the document in the correct case.

(Amended, effective December 1, 2011.)

### **ECF 5.12. Proposed Orders**

#### **A. How to Submit to ECF.**

1. A proposed order shall be submitted electronically to ECF as an ECF attachment to the motion requesting the relief to be ordered.

- a. The proposed order shall only be submitted when required by the local rules or the judicial officer procedures of the presiding judge.



b. If the proposed order is not attached when required, contact the ECF help desk.

2. If the proposed order does not require the filing of a motion, (e.g. Proposed Scheduling Order, Proposed Pre-Trial Order, etc.) it shall be submitted electronically as a separate ECF filing.

**B. Additional Submission to Judicial Officer.** Because the electronically-filed PDF document submitted to ECF cannot be changed by a judicial officer, the filer, after filing the proposed order in ECF, shall also submit the proposed order as follows:

**1. Word Processing Format.** A proposed order must be submitted in a Word Perfect or Word format. Judicial officers will not accept proposed orders in PDF format.

**2. E-Mail Transmission to Judicial Officer.** A proposed order shall be sent via e-mail to the chambers of the assigned district judge and magistrate judge. A proposed order shall be sent as an attachment to the e-mail. The subject line of the e-mail shall contain the case number, short title, the words "Proposed Order," and the docket number of the motion to which the proposed order relates (e.g., *Jones v. Smith*, case number, Proposed Order re: Docket Entry #85).

**3. E-Mail Addresses of Chambers.** Only proposed orders and any other documents specified by a judicial officer should be submitted via e-mail pursuant to this section. Any other submission will be considered to be ex parte and will not be reviewed. The chambers' e-mail addresses may be found in Appendix A.

**C. Signed Orders.** The clerk shall enter all signed orders on the docket in ECF.

#### ECF 5.13.

#### Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment on the docket in ECF, the clerk will transmit a Notice of Electronic Filing which constitutes the notice required under Fed.R.Civ.P. 77(d). The clerk shall give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Civil Procedure.

#### ECF 5.14.

#### Entry on Docket by Clerk

**A. Fed.R.Civ.P. 58 and 79.** All orders, decrees, judgments, and proceedings of the court filed in ECF shall constitute entry on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79.

**B. Same Force and Effect.** Any order or other court-issued document filed electronically without the manual signature of a judicial officer or clerk has the same force and effect as if the judicial officer or clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

**C. "Text Only Order" Docket Entry.** An order may be issued as a "text only order" entry on the docket, without an attached document. Such orders are official and binding. A judicial officer or the Clerk's office, if appropriate, may issue routine orders or notices by a "text only" docket entry for which ECF will generate a Notice of Electronic Filing and e-mail notification to parties in ECF. In such cases, no PDF document will be attached. The "text only order" will constitute the court's only documentation on the matter. Copies of a Notice of Electronic Filing for the "text only" docket entry will be sent in paper format to those not using ECF.

#### ECF 5.15.

#### Bill of Costs

The proposed bills of costs shall be filed electronically in ECF using the docket event "Proposed Bill of Costs."

**ECF 5.16.**  
**Appeals in General**

When a notice of appeal is filed in ECF, it is not necessary to provide the court with paper copies of the notice for service on the other parties. The Notice of Electronic Filing generated by the system will constitute the copy the clerk is required to serve under Fed. R. App. P. 3(d). See Section 5.4(C)(3) regarding filing fees.

**ECF 5.17.**  
**Supersedeas Bond**

A supersedeas bond requires court approval and shall be filed and transmitted as a proposed order under Section 5.12.

## **VI. PUBLIC ACCESS TO DOCUMENTS AND PROCEEDINGS**

**ECF 6.1.**  
**Filing of Cases and Documents Under Restriction**

**A. Restricted Cases.**

**1. Commencing an Action.** When commencing an action either under restriction pursuant to statute or by filing a motion to restrict it shall be done in accordance with Section 5.4 of these procedures. The e-mail or cover letter shall note that it is to be sealed or that a motion to seal the case is being filed.

**2. Appearance in Case.** After commencement of an action, an attorney or *pro se* party entering their appearance must file the initial document in paper format.

**3. Filing Electronically.** Once commenced, except for the parties' initial filing, all subsequent documents shall be filed using ECF.

**4. Service of Documents.** Parties should not use the court's electronic notice facilities to serve documents in restricted cases. An NEF will not be sent on documents filed in restricted cases. Service should be made in accordance with the Federal Rules of Civil Procedure and a certificate of mailing must be attached to the filed document.

**5. Viewing Restricted Cases.** Only parties to the case will be able to view docket entries and documents in restricted cases.

**B. Document Restriction Level 1 (access limited to case participants and the court).**

**1. Filing Restricted Documents.** Any document ordered to be filed under restriction or a document where the filing party is contemporaneously filing a motion to restrict the document shall be filed using ECF.

The document should be filed using the docket event "Restricted Document level ....." (i.e., Level 1 = access limited to case participants and the court).

**2. Service of Documents.** An NEF will be sent on documents filed and access to the document is available via the NEF. If a party is not authorized to file electronically, service should be made in accordance with the Federal Rules of Civil Procedure and a certificate of mailing must be attached to the filed document.

**3. Viewing Restricted Level 1 Documents.** Case participants and the court may view the document via the NEF.

**C. Document Restriction Level 2 (access limited to the filing party and the court).**

**1. Filing Restricted Documents.** Any document ordered to be filed under restriction or a document where the filing party is contemporaneously filing a motion to restrict the document shall be filed using ECF.

The document should be filed using the docket event "Restricted Document level ....." (i.e., Level 2 = access limited to the filing party and the court).

**2. Service of Documents.** An NEF will be sent on documents filed and the appropriate parties will have access via the NEF. If a party is not authorized to file



electronically, service should be made in accordance with the Federal Rules of Civil Procedure and a certificate of mailing must be attached to the filed document.

**3. Viewing Restricted Level 2 Documents.** The filing party and the court may view the document via the NEF.

**D. Document Restriction Level 3 (access limited to the court).**

**1. Filing Restricted Documents.** Any document ordered to be filed under restriction or a document where the filing party is contemporaneously filing a motion to restrict the document shall be filed using ECF.

The document should be filed using the docket event "Restricted Document level ....." (i.e., Level 3 - access limited to the court).

**2. Service of Documents.** An NEF will be sent on documents filed but the parties will not have access via the NEF. Service should be made in accordance with the Federal Rules of Civil Procedure and a certificate of mailing must be attached to the filed document.

**3. Viewing Restricted Level 3 Documents.** The court may view the document via the NEF.

(Amended, effective December 1, 2011.)

**ECF 6.2.**

**CJA Submissions**

A party who seeks to submit or file a document without giving notice to other parties should file the document electronically.

**A. Filing of CJA Documents.** Any CJA forms and supporting documents to be filed pursuant to representation under the Criminal Justice Act must be filed using the appropriate CJA document docket event, and will be treated as a restricted level 2 document under these procedures. CJA forms should be filed using the docket events available for these documents (e.g., CJA Form 21).

**B. Service of Documents.** An NEF will be generated for the restricted document and the filer and the court may view the document via the NEF. The NEF will only contain the statement "Restricted Document Level 2," or the name of the CJA form. Service should be made in accordance with the Federal Rules of Criminal Procedure and a certificate of mailing must be attached to the filed document.

**C. Viewing CJA Submissions.** The filing party and the court may view the document via the NEF.

(Amended, effective December 1, 2011.)

**ECF 6.3.**

**Documents Submitted for In Camera Review**

A party who seeks to present a document to a judicial officer for in camera review, whether acting on the party's own initiative or pursuant to a court order, shall present the document to the judicial officer by mailing or hand delivering the document to the clerk's office for the judicial officer in paper.

**A. Label.** Any document submitted pursuant to this subsection must be clearly labeled "for in camera review."

**B. Judicial Officer.** A judicial officer who receives a document submitted for in camera review may direct the party who submits it to file the document electronically, using normal ECF procedures, or may otherwise handle and address the document as deemed most appropriate.

**ECF 6.4.**

**Confidential Settlement Statements**

Confidential settlement statements shall be submitted via e-mail transmission as explained in Section 5.12(B). A confidential settlement statement shall be sent as an attachment to the e-mail with "confidential settlement statement - short case title and case



number” (e.g., confidential settlement statement - *Jones v. Smith*, case number) in the subject line. It shall be sent as a PDF document.

## **VII. SOCIAL SECURITY CASES**

See Federal Rule of Civil Procedure 5.2.

## **VIII. EMERGENCY MATTERS IN BANKRUPTCY APPEALS**

If a matter needs to be brought to the court’s attention before the transmittal of the notice of appeal, the moving party shall file the case-initiating motion in the manner outlined in Section 5.4 and 5.5 for initiating a case. The e-mail address for submitting the motion is [newcases@cod.uscourts.gov](mailto:newcases@cod.uscourts.gov).

## **IX. POST-JUDGMENT PROCESS**

Parties needing to have writs and other post-judgment process issued by the court shall submit the items electronically to [newcases@cod.uscourts.gov](mailto:newcases@cod.uscourts.gov). If appropriate for issuance, the clerk shall sign, seal, and return the documents to the filing party for service.

## **X. HYPERLINKS**

### **ECF 10.1.**

#### **Types of Hyperlinks**

Electronically filed documents may contain the following types of hyperlinks:

- A. hyperlinks to other portions of the same document; and
- B. hyperlinks to a location on the Internet that contains a source document for a citation.

### **ECF 10.2.**

#### **Standard Citation Format Required**

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document.

### **ECF 10.3.**

#### **Limitation**

Neither a hyperlink, nor any site to which it refers, shall be considered part of the official record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document.

### **ECF 10.4.**

#### **Disclaimer**

The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

## **XI. PRIVACY POLICY**

See Federal Rule of Civil Procedure 5.2.

See General Order 2007-3.

## **XII. PUBLIC ACCESS TO ECF**

### **ECF 12.1.**

#### **Access at the Clerk's Office**

Access to ECF is available to the public at no charge at the clerk's office during regular business hours.

### **ECF 12.2.**

#### **Paper Copies and Certified Copies**

Paper copies and certified copies of electronically filed documents may be purchased at the clerk's office. The fee for copying and certifying will be in accordance with 28 U.S.C. § 1914.

### **ECF 12.3.**

#### **Internet Access**

Remote electronic access to ECF is limited to subscribers to PACER. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as filed documents and docket sheets in civil cases. Any member of the public may apply for a PACER account.





## **XII. APPENDICES AND ATTACHMENTS**

### **Appendix A. Judicial Officer E-mail Addresses.**

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#### **JUDICIAL OFFICER**

Chief Judge Wiley Y. Daniel  
Senior Judge Richard P. Matsch  
Senior Judge John L. Kane  
Senior Judge Lewis T. Babcock  
Judge Marcia S. Krieger  
Judge Robert E. Blackburn  
Judge Phillip A. Brimmer  
Judge Christine M. Arguello  
Judge William J. Martinez  
Judge R. Brooke Jackson  
Senior Circuit Judge David M. Ebel  
Magistrate Judge Michael J. Watanabe  
Magistrate Judge Boyd N. Boland  
Magistrate Judge Craig B. Shaffer  
Magistrate Judge Michael E. Hegarty  
Magistrate Judge Kristen L. Mix  
Magistrate Judge Kathleen M. Tafoya  
Magistrate Judge Gudrun J. Rice  
Magistrate Judge David L. West

#### **E-MAIL ADDRESS**

Daniel\_Chambers@cod.uscourts.gov  
Matsch\_Chambers@cod.uscourts.gov  
Kane\_Chambers@cod.uscourts.gov  
Babcock\_Chambers@cod.uscourts.gov  
Krieger\_Chambers@cod.uscourts.gov  
Blackburn\_Chambers@cod.uscourts.gov  
Brimmer\_Chambers@cod.uscourts.gov  
Arguello\_Chambers@cod.uscourts.gov  
Martinez\_Chambers@cod.uscourts.gov  
Jackson\_Chambers@cod.uscourts.gov  
Ebel\_Chambers@ca10.uscourts.gov  
Watanabe\_Chambers@cod.uscourts.gov  
Boland\_Chambers@cod.uscourts.gov  
Shaffer\_Chambers@cod.uscourts.gov  
Hegarty\_Chambers@cod.uscourts.gov  
Mix\_Chambers@cod.uscourts.gov  
Tafoya\_Chambers@cod.uscourts.gov  
Rice\_Chambers@cod.uscourts.gov  
West\_Chambers@cod.uscourts.gov

Proposed orders for visiting judges should be submitted pursuant to the home court preferences of the visiting judge.

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Appendix B.

Suggested Procedural Filing Guideline for Filing A Notice of Removal and State Court Documents.

Suggested procedural filing guideline for filing a Notice of Removal and state court documents.

<p>The information provided below is only a <u>suggested procedural guideline</u> and is <b>not</b> all inclusive due to the status of the state case, the documents that may or may not have been filed in district court or the different policies in each district which may affect what documents are available to be filed in the United States District Court, for the District of Colorado. It is the responsibility of the attorney or pro se party removing the case to interpret and follow Local Rule D.C.COLO.LCivR 81.1 - PROCEDURE FOR REMOVAL, 28 U.S.C. § 1446(a) and FRCP 5.</p>	
<p>Case Opening and Initiating documents:</p> <p>1. Review 28 U.S.C. § 1446(a) to ensure compliance. 28 U.S.C. § 1446(a) requires the filing of the Notice of Removal and specific state court documents. Each of the state court documents shall be individual PDFs. As a suggested procedural guideline, see item 3 below.</p> <p>2. Open a new case. (See Attorney Civil Case Opening Procedures for more information.)</p> <p>3. File the initiating document (Notice of Removal)</p> <p>a. Notice of Removal (main document)</p> <p>b. Complaint/Cross Claim/Counter Claim/3rd Party Complaint or other initiating document</p> <p>c. Answers to complaints or initiating petitions.</p> <p>d. Affidavit of Service/Return of Service of the complaint and summons.</p> <p>e. Any orders served upon the defendant. (NOTE1: Documents for items b through e are from the state court case)</p> <p>(NOTE2: The Description field for attachments in CMECF shall clearly identify the state court document. For example, the state court complaint would be described as "State Court Complaint", etc.</p> <p>f. Civil Cover Sheet</p> <p>g. Supplemental Civil Cover Sheet (NOTE: Any pending motions and pending hearings shall be noted on the Supplemental Cover Sheet)</p>	<p>Pending State Court Hearings:</p> <p>3. If a hearing in the state court has been set before a case is removed, counsel or the pro se party removing the case shall notify the state court judge forthwith of the removal.</p> <p>Use the Notice - Other event to file a copy.</p> <p>4. The removing party shall <u>notify the federal judge to whom the case is assigned of the nature, time, and place of the state court setting.</u></p> <p>This may be accomplished by completing Section D of the Supplemental Civil Cover Sheet.</p>
<p>Within 14 Days of filing of the Notice of Removal:</p> <p>2. Within fourteen (14) days of the filing of the Notice of Removal, the removing party shall file in CMECF, the following types of documents:</p> <p><b>NOTE:</b> Each of the following documents should be separate PDF documents and each PDF cannot exceed 5.0 MB in size.</p> <p>A. Current state docket sheet (register of actions.) (Use the Notice - Other event under the Other filings - Notices category.)</p> <p>B. Each pending motion from state court (Use the appropriate federal motion event under the Motions and Related filings - Motions category.)</p> <p>C. All related responses, replies, and briefs. (Use response to motion, reply to motion, brief in support of motion, or brief in opposition of motion event under the Motions and Related filings - Supporting documents, Responses and Replies category.)</p> <p><b>NOTE:</b> Each response, reply, or brief shall be filed using the appropriate response, reply, or brief event and linked to the motion they relate to.</p> <p>D. State petitions. (Use the petition event under the Other Filings - Other Documents category.)</p>	

**ECF Form 1.**  
**Application of Attorney to File Documents in Paper.**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**APPLICATION OF ATTORNEY TO FILE DOCUMENTS IN PAPER**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Please list pending cases in which you have entered an appearance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State reasons why at this time you should be exempted from filing electronically in accordance with the court's Electronic Case Filing Procedures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State when you anticipate being prepared to file electronically:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note: If this request is approved you will be required to file an original and two copies of all documents in accordance with the court's Local Rules.**

Submit request in duplicate to:

Clerk, United States District Court  
Electronic Filing Registration  
901 19<sup>th</sup> Street, Room A-105  
Denver, Colorado 80294-3589

**You will be notified in writing of the court's determination.**

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**ECF Form 2.**  
**Instructions: ECF Registration Form - *Pro Se*.**

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**INSTRUCTIONS: ECF REGISTRATION FORM - *PRO SE***

Case Management/Electronic Case Files (CM/ECF) is the new automated case management and electronic docketing system of the United States District Court in Colorado. CM/ECF provides a new, easy-to-use electronic filing feature that allows authorized individuals to file electronically and view court documents over the Internet. It also provides notice of electronic filing of documents by e-mail for ECF registered participants. Please note that you will need a PACER account to query cases and access case related documents.

Pursuant to Federal Rule of Civil Procedure 11, every pleading, motion, and other paper shall be signed by at least one attorney of record, or if the party is not represented by an attorney, all papers shall be signed by the party. An attorney's/participant's password issued by the court combined with the user's identification, serves as and constitutes the attorney's/participant's signature. Therefore, an attorney/participant must protect and secure the password issued by the court. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney/participant to immediately change the password and notify the court.

Each *pro se* party desiring to file a pleading or other papers electronically must complete and sign the attached REGISTRATION FORM - *PRO SE*. Registration as a Filing User constitutes: (1) consent to receive notice electronically and waiver of the right to receive notice by first-class mail pursuant to Federal Rule of Civil Procedure 5; (2) consent to electronic service and waiver of the right to service by personal service or first class mail pursuant to Federal Rule of Civil Procedure 5 and 77, except with regard to service of a summons and complaint. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment.

Registered *pro se* parties will have privileges to electronically submit pleadings and papers and view the electronic docket sheets and documents. By registering, participants consent to receiving electronic notice of filings through the system.

A user accesses court information via the court's Internet site or through the Public Access to Court Electronic Records (PACER) Service Center. Although the court manages the procedures for electronic filing, all electronic public access to case file documents occurs through PACER. A PACER service account is mandatory. The Judicial Conference of the United States has recently approved a schedule of fees to be charged for selected electronic records access requests by users of the CM/ECF system. This requires a PACER account in addition to, but separate from, the CM/ECF registration. If you have not yet received a PACER account, contact the PACER Service Center at <http://pacer.psc.uscourts.gov> or call the PACER Service Center at 1-800-676-6856 or 210-301-6440.

A non-prisoner *pro se* may apply to register as a participant in ECF by completing the attached REGISTRATION FORM - *PRO SE* and submitting it to the clerk's office. **The *pro se* participant must have a pending case before the court.** If the applicant is approved by the court, the clerk's office will send the applicant's ECF login to the applicant's e-mail account. Upon closure of the case for which access is granted (and the expiration of all appeal periods), the account will be deactivated. Unless authorized to file in ECF, non-prisoner *pro se* filers must file their documents in paper. The documents will be scanned and uploaded to ECF by court staff.

Once registration is complete, you will receive notification via e-mail of your user id needed to access the system. The combination of login and password will serve as the signature of the *pro se* filing documents. You must protect the security of your password and immediately change the password and notify the court if you learn that their password has been compromised by an unauthorized user. You may contact the Electronic Filing Help Desk in the clerk's office at 303-335-2050 or toll free at 866-365-6381 if you have any questions concerning the registration process or the use of the electronic filing system. Completion of all the following fields is required for registration; incomplete registrations will not be processed.

---

**ECF Form 2.  
ECF Registration Form - Pro Se.**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**ECF REGISTRATION FORM - PRO SE**

To register for an account on this court's Electronic Case Filing System (ECF), please complete the following information:

Pending case number: \_\_\_\_\_

First Name: \_\_\_\_\_

Middle Name: \_\_\_\_\_

Last Name: \_\_\_\_\_

Address1: \_\_\_\_\_

Address2: \_\_\_\_\_

Phone number: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

E-mail1: \_\_\_\_\_

For the purpose of filing confirmations and issuance of ECF login credentials

E-mail2 (optional): \_\_\_\_\_

The undersigned agrees to abide by all Court rules, orders, and policies and procedures governing the use of the electronic filing system. The undersigned also consents to receiving notice of filings pursuant to Fed. R. Civ. P. 5 and 77 via the Court's electronic filing system. The undersigned certifies that he/she has read and is familiar with the rules of practice and the Electronic Case Filing Procedures governing electronic filing, which may be found on this website. The undersigned consents that use of the undersigned's login and password when filing papers and pleadings will serve as their signature pursuant to and for the purposes of Fed R. Civ. P. 11. You agree that all transmissions for electronic case filings of pleadings and documents to the ECF system shall be titled in accordance with the approved directory of civil events of the ECF system. By signing this form, you certify that you have a PACER account. Visit the PACER website at <http://pacer.psc.uscourts.gov> to establish a PACER account.

The information contained in this box will be maintained confidentially, and is necessary for security/confirmation purposes.

Last four digits of SSN: \_\_\_\_\_

Mother's maiden name: \_\_\_\_\_

CW/ECF Password: \_\_\_\_\_

Place mouse over password box for more information on password rules.

Mail Completed Form to.

Clerk, United States District Court  
Electronic Filing Registration  
901 19th Street, Room #A105  
Denver, Colorado 80294-3589

I accept the above rules and guidelines.

Print this form, sign, and mail to address noted on these instructions.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

FOR COURT USE ONLY:

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

Judicial Officer \_\_\_\_\_ Date \_\_\_\_\_

**ECF Form 3.**  
**Sample Formats - Certificate of Service (CM/ECF).**

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**SAMPLE FORMATS - CERTIFICATE OF SERVICE (CM/ECF)**

Sample A

I hereby certify that on \_\_\_\_\_ Date \_\_\_\_\_, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, and I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

s/ \_\_\_\_\_  
Attorney Name  
Attorney for (Plaintiff/Defendant)  
Law Firm Name  
Law Firm Address  
Law Firm Phone Number  
Law Firm Fax  
Attorney's E-mail Address

Sample B

I hereby certify that on \_\_\_\_\_ Date \_\_\_\_\_, I presented the foregoing to the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following e-mail addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, and I hereby certify that I have mailed or served the document or paper to the following participants in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

s/ \_\_\_\_\_  
Attorney Name  
Attorney for (Plaintiff/Defendant)  
Law Firm Name  
Law Firm Address  
Law Firm Phone Number  
Law Firm Fax  
Attorney's E-mail Address



# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

## SECTION II. CRIMINAL CASES

### I. ELECTRONIC CASE FILING SYSTEM

#### ECF 1.1. In General

Unless otherwise permitted by these administrative procedures, by local rules, or by a general order of the court, all documents filed in criminal cases, shall be filed electronically in a portable document format (PDF) using the Electronic Case Filing System (ECF) connected through the court's web site at <http://www.cod.uscourts.gov>.

#### ECF 1.2. Exceptions

**A. Materials That Cannot Be Converted to Electronic Form.** Materials that cannot be converted to electronic form (e.g., videotape, audiotape, etc.) may be filed by delivering them directly to the clerk's office and following Section 5.8(F) of these procedures. For brevity, these procedures sometimes refer to these materials as "conventionally submitted materials."

**B. Charging Documents.** Complaints, informations, indictments, and superseding or amended versions of the same required to be filed as charging documents are governed by Section 5.4 of these procedures.

**C. Documents for Issuance.** Documents requiring issuance by the court (e.g., search warrants, wiretaps, pen registers, etc.), except as otherwise covered by Section 5.4, should be delivered conventionally to the clerk's office or judicial officer as appropriate.

**D. Plea Agreements.** A plea agreement shall be submitted to the judicial officer for review at least 48 hours prior to the hearing pursuant to D.C.COLO.LCrR 11.1 using the process described in Section V.L. of these procedures.

**E. Restricted Cases.** Cases commenced under restriction pursuant to statute or restricted pursuant to order in accordance with the local rules of this court shall be filed in accordance with Section VI.

**F. Restricted Documents, Restricted Submissions, Documents for In Camera Review, Grand Jury Matters, and Juvenile Matters.** Such documents shall be filed in accordance with Section VI.

**G. Prisoner and Non-Prisoner *Pro Se*.** Prisoner and non-prisoner *pro se* parties may not use ECF for criminal case filings and must file their documents in paper. Their documents will be scanned and uploaded into ECF by court staff.

**H. Application for Attorney to File in Paper.** An attorney may apply for permission to file documents in paper by following Section II. of these procedures.

(Amended, effective December 1, 2011.)

#### ECF 1.3. Official Files and Records

**A. Files.** The clerk's office will not maintain a paper court file in any criminal case commenced after December 5, 2005, except as otherwise provided in these procedures.

**B. Official Record.** The official court record from December 5, 2005, forward shall be the electronic file maintained on the court's servers and any documents or exhibits which these procedures allow to be filed by delivery to the clerk's office and are not scanned and posted to ECF.

**C. Filing for Purposes of Rules.** Electronic transmission of a document to ECF consistent with these procedures, together with the transmission of a Notice of Electronic Filing (NEF) that the court's system generates from the electronic submission, constitutes filing of the document for purposes of the Federal Rules of Criminal Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk.

**D. Filer Required to Maintain Certain Documents.** Documents (a) that are electronically filed and (b) that require signatures, other than or in addition to that of the filer (e.g., affidavits), must be maintained in paper form by the filer until two years after all time periods for appeal have expired, all appeals are final, or the completion of the sentences of all defendants, whichever is later. At the request of the court, the filer must provide the documents for review.

**E. Legible.** Filers are required to verify that all documents are legible before the documents are filed electronically with the court.

**F. Scanning.** Filers shall only scan documents unavailable in an electronic format. Documents shall be converted to PDF directly from the software application in which they were created (e.g., Word, WordPerfect, Excel). **Documents converted electronically shall be text-searchable.**

#### **ECF 1.4. System Availability**

**A. Schedule.** ECF will be available 24 hours a day, seven days a week. If maintenance or repairs require a period of downtime, advance notice will be provided on the court's web site.

**B. ECF Help Desk.** The ECF help desk is supported Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. Mountain Time. The help desk may be contacted by:

1. telephone at 303-335-2050 or 1-866-365-6381; or
2. electronic mail (e-mail) at [cod\\_cmecf@cod.uscourts.gov](mailto:cod_cmecf@cod.uscourts.gov).

(Amended, effective December 1, 2011.)

## **II. APPLICATION FOR ATTORNEY TO FILE IN PAPER FORMAT**

### **ECF 2.1. Permission Required**

In exceptional circumstances, an attorney may apply to a judicial officer designated by the Chief Judge for permission to file documents in paper format.

### **ECF 2.2. Application**

An application for leave to file in paper format is available on the court's web site at <http://www.cod.uscourts.gov> or from the clerk's office. Applications shall be filed in paper with the clerk. See ECF Form 1.

## **III. REGISTRATION FOR PACER AND ECF**

### **ECF 3.1. PACER Registration Required for ECF**

Documents already on the court's servers are accessed through the Public Access to Court Electronic Records ("PACER") Service Center. The Notice of Electronic Filing

generated by each transmission of a document to ECF permits the filer and each recipient, without charge, to view, print, and/or download the document filed. Any subsequent use of ECF to review documents requires a PACER login, in addition to the ECF login and password issued by the court. To register for PACER, a user must complete the online form or submit in paper a registration form available on the PACER web site (<http://pacer.psc.uscourts.gov>).

### **ECF 3.2.**

#### **Court Registration Required for ECF**

**A. Attorney Admitted to Practice in This Court** (See D.C.COLO.LCrimR 57.5 A). An attorney who is a member in good standing of the bar of this court shall register as a participant in ECF by completing the ECF Attorney Registration process on the court's web site. After the registration is approved by the court, the clerk's office will send the attorney's ECF login to the attorney's email account. **The ECF account is the possession of the attorney, not the firm, and responsibility for maintenance is the attorney's.**

Attorneys registered for ECF and representing themselves *pro se* shall use ECF to file documents unless authorized to file conventionally under Section II of these procedures.

**B. Consent to Electronic Service.** Registration as a participant in ECF shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Criminal Procedure.

ECF participants shall verify that any security filtering software on the user's electronic mail system will not inhibit service from the court.

**C. Revocation of ECF Registration and Access.** The court may for good cause revoke the ECF registration of an attorney.

## **IV. LOGIN AND PASSWORD**

### **ECF 4.1.**

#### **Change of Password**

After registering, an attorney may change his or her ECF password. Directions on how to do so may be found in the ECF User's Manual on the court's web site at <http://www.cod.uscourts.gov>.

### **ECF 4.2.**

#### **Restrictions on Use**

No attorney shall permit or cause to permit his or her login and password to be used by anyone other than a person whom the attorney has authorized to file in the attorney's name.

### **ECF 4.3.**

#### **Responsibility and Sanctions**

An attorney is responsible for all documents filed using his or her login and password.

### **ECF 4.4.**

#### **Security of Password**

If an attorney believes that the security of an existing password has been compromised or that an ECF account has been misused, the attorney must change his or her password and contact the ECF help desk immediately.

### **ECF 4.5.**

#### **Change of E-Mail Address**

An attorney whose e-mail address changes, shall, within five days, (1) change the e-mail address in the account maintenance link in ECF and (2) file a notice of change of e-mail address.



## V. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

### ECF 5.1. In General

**A. Filing in ECF.** All motions, pleadings, papers, applications, briefs, memoranda of law, or other documents shall be electronically filed in ECF, except as otherwise provided by these procedures. Except as otherwise provided with respect to initiating documents (see Section 5.4 of these procedures), e-mailing a document to the clerk's office or to a judicial officer does not constitute filing the document. Proposed orders shall be submitted to the court only as provided for in Section 5.12 of these procedures.

**B. Notice of Electronic Filing Required.** The notice of electronic filing will note when a pleading or paper was received in ECF.

**C. Fees Payable to Clerk.** Any fee required for filing a pleading or paper is payable to the Clerk, U.S. District Court by check, money order, credit card, or cash. The clerk's office will document the receipt of fees in ECF. See Section 5.4(B)(3) for payment instructions.

### ECF 5.2. Time of Filing Documents in ECF

**A. Document Deemed Timely.** A document will be deemed timely filed in ECF if it is filed prior to midnight (Mountain Time) on its due date unless a specific time is designated by a judicial officer in an order.

**B. ECF Technical Failure.** The clerk's office may deem the ECF site subject to a technical failure on a given day if the site is unable to accept filings. In the event of a technical failure, notice thereof will be posted on the court's web site, and documents due that day shall be due the next business day.

**C. Filer's Technical Difficulty.** A filer who cannot file a pleading or document due on a given date in ECF because of a technical difficulty not covered in Section 5.2(C) above must file as soon as practicable a motion for extension of time to file the pleading or document.

### ECF 5.3. Signatures

**A. "s/ signature."** Every pleading, written motion, and other paper to be filed electronically and requiring a signature must include a signature block with the filer's name preceded by an "s/" or "/s/" and typed in the space where the signature would otherwise appear.

**B. Filer's Signature on Case-Initiating Documents.** Because the special rules concerning case-initiating documents do not require use of a login and password, the "s/ signature" serves as the filer's signature on all such documents filed with the court. It also serves as the filer's signature for purposes of the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court.

**C. Filer's Signature on Documents.** The login, password, and the "s/ signature" serve as the filer's signature on all documents, other than case-initiating documents, electronically filed with the court. They also serve as the filer's signature for purposes of the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. The "s/signature" must match the filer name on the account for which the login and password are registered.

**D. Signature Block.** The correct format for a signature block is as follows:

s/ Pat Attorney  
Pat Attorney  
ABC Law Firm

123 South Street  
Denver, CO 80202-1234  
Telephone: (303) 555-5555  
FAX: (303) 555-5554  
E-mail: patattorney@xyz.com  
Attorney for (Plaintiff/Defendant) XYZ Company

**E. Multiple Signatures.** When a stipulation or other document (e.g., a joint motion or joint exhibit list) requires two or more signatures:

1. the filer shall confirm that the content of the document is acceptable to all signatories by obtaining their ink signatures or electronic signature (by e-mail or facsimile) authorization from counsel; and
2. the filer shall file the document electronically using the “s/ signature” for each signatory.

**F. Non-Attorney/Third Party Signatures.** If a document requires a signature other than that of the filer (e.g., an affidavit or declaration), the filer must obtain the ink signature of the signatory and the notary if applicable on the paper document. The filer shall then cause the “s/ signature” of the signatory and the notary if applicable to be placed on the electronic word processing version of the document. After obtaining the ink signature(s) on paper and affixing the “s/ signature(s)” to the word processing version, the filer shall cause the word processing version to be converted to PDF and posted to ECF. Scanning the document and posting the scanned result to ECF should be avoided. By filing the document, the filer certifies that the document has been signed by all necessary people, including affiant or declarant and notary if applicable, that the ink-signed version exists, and that the document will be available in the filer’s office for inspection.

1. This rule includes all notarized documents.
2. This rule includes all documents requiring the signature(s) of a non-attorney, but submitted by a filer (e.g. affiant or declarant).
3. The electronically filed document as it is maintained on the court’s servers shall constitute the official version of that record.
4. Upon request by an attorney of record, a *pro se* party or the court, the ink signature version of the document must be made available for inspection.
5. Charging documents submitted conventionally shall be maintained by the clerk’s office.

#### **ECF 5.4. New Cases**

**A. Initiating Documents From ECF Registrants.** Charging documents (e.g., informations, indictments, superseding indictments, etc.), and information sheets shall be submitted both conventionally and by e-mail in PDF format. Initiating documents outside of charging documents shall be submitted by e-mail in PDF format. The clerk’s office will post these materials to ECF.

1. The ink signature version of the charging document shall be presented to a judicial officer or where required to the clerk’s office.
2. Where appropriate, the electronic signature version of the charging document shall contain the statement “Ink signature on file in the clerk’s office” in the signature space of the grand jury foreperson or deputy foreperson.

**B. Submitting Initiating Documents by E-mail.**

1. **E-mail Address.** The e-mail address for submitting initiating documents is [crnewcases@cod.uscourts.gov](mailto:crnewcases@cod.uscourts.gov). Except as otherwise stated in these procedures, only initiating documents may be sent to this e-mail address.
2. **Subject Line.** In the subject line of the new cases e-mail, indicate the type of document being submitted and the short case title (indictment - *USA v. Smith*) in the subject line.
3. **Filing Fee.** Where appropriate, a filing fee shall be submitted. In the e-mail, indicate whether the filing party is:



a. paying the filing fee by cash, check, or money order separately delivered to the clerk's office and, in the case of a check or money order, made payable to "Clerk, U.S. District Court," including the short case title typed or written directly on the memo line of the check or money order;

b. paying the filing fee by a credit card not on file with the clerk's office, in which case the filing party will provide, in the e-mail or separately, the type of credit card (e.g., Visa, MasterCard, Discover Card), the name, address and telephone number of the cardholder, the card number and date of expiration; or

c. requesting waiver of the filing fee, in which case the initiating party will separately attach to the e-mail a PDF version of the application to proceed pursuant to 28 U.S.C. § 1915.

**C. Superseding or Amended Charging Documents.** Charging documents to be filed in pending cases must be submitted by following the procedures described in Section 5.4.

**D. Warrants.** Warrants may be submitted conventionally or received via the new cases e-mail address (see Section 5.4) and will be issued by the clerk and returned to the filer conventionally or by reply e-mail.

**E. Summonses.** Summonses may be submitted conventionally or received via the new cases e-mail address (see Section 5.4) and will be issued by the clerk and returned to the filer conventionally or by reply e-mail.

**F. State Court Removals.** Copies of state court pleadings in proceedings removed from state court must also be provided in PDF and included with the filing of the initiating documents.

**G. Criminal Miscellaneous Cases.** Unless otherwise covered in these procedures, case initiating documents in criminal miscellaneous cases must be submitted by following the procedures described in Section 5.4.

(Amended, effective February 23, 2012.)

## ECF 5.5.

### Documents that Add or Delete Attorneys

**A. Appearance.** ECF only recognizes an appearance of an attorney or party who (1) signs a pleading/paper, (2) files an entry of appearance in ECF, or (3) is appointed by the court. Attorneys will not receive any Notices of Electronic Filing, unless the attorney also signs a pleading/paper, files an entry of appearance, or is appointed by the court.

**B. Withdrawal of Appearance.** Withdrawal of an appearance shall be in accordance with D.C.COLO.LCrimR 57.5 D. Upon entry of the order granting withdrawal, the clerk shall terminate the movant as an attorney of record in that case in ECF.

**C. Substitution of Counsel.** Withdrawal and entry shall be done in accordance with the court's local rules and as stated above. Existing counsel may not withdraw and new counsel may not enter an appearance by filing a substitution of counsel.

**D. Revocation or Modification of Probation or Supervised Release Proceedings.** In a situation regarding revocation or modification of probation or supervised release, where appropriate retained counsel shall promptly enter an appearance in the case. Where counsel is not retained and appointment of counsel is necessary it shall be done by court order and/or appointment under the Criminal Justice Act.

## ECF 5.6.

### Motions Practice

**A. Motion Needing Immediate Attention.** When a motion requiring immediate attention has been presented, the filer shall call the clerk's office at 303-844-2115 to notify the court of such filing.

**B. Leave of the Court.** If filing a document requires leave of the court (e.g., surreply brief, etc.), the filer shall post the proposed document as an ECF attachment to the motion. (See Section 5.8 of these procedures concerning filing of attachments.)



**ECF 5.7.****Service**

**A. Certificate of Service Required.** A certificate of service shall be made part of the pleading in ECF. A certificate of service shall list all parties entitled to service or notice, and the manner in which service or notice was accomplished on each party. Sample language for a certificate of service is attached to these procedures as ECF Form 2.

**B. Notice of Electronic Filing Constitutes Service on ECF Participant.** When a pleading or document is filed in ECF, ECF will generate a Notice of Electronic Filing. If a recipient is a registered participant in ECF, the ECF-generated Notice of Electronic Filing shall constitute service of the document.

**C. Terminating and Reactivating Electronic Service.** A user receiving electronic service in a case may notify the court that service should be terminated by filing a notice stating either (1) that an order for withdrawal for the user has been granted or (2) that the party the user represents is no longer pending in the case. Counsel may file a notice re-activating service with the court in those situations where service, but not representation, has been terminated.

**D. Undeliverable Electronic Service.** Service on ECF participants, as required by Section 5.7(B), is considered to occur upon the successful delivery of the Notice of Electronic Filing (NEF) to the primary e-mail address in a participant's Electronic Case Filing account (ECF) account. Service upon the secondary e-mail address(es) in an ECF participant's ECF account is considered courtesy notification.

If a Notice of Electronic Filing is returned as undeliverable to the Court for the primary e-mail address of the participant, the Clerk's office will attempt to contact the participant to determine the cause for the returned notice. If the primary e-mail address has changed or delivery was impacted by an external issue (i.e., spam filtering, recipient's mail server problem, e-mail capacity was exceeded, etc.), the Clerk's office will work with the participant to change the e-mail address and/or resend any undeliverable Notices of Electronic Filing. If the participant cannot be reached, the Clerk's office will contact co-counsel, follow procedures approved by the clerk and/or contact the chambers of the judicial officer assigned to the case, to find an appropriate way to resolve the notification issue or turn off their notification.

If a Notice of Electronic Filing is returned as undeliverable to the Court for any secondary e-mail address(es) in a participant's ECF account, those secondary e-mail address(es) will, in most instances, be automatically configured to no longer allow that email address(es) to receive notices. The participant will not be contacted by the Clerk's office.

**E. Service on Parties Not Registered for ECF.** Filers are required to serve copies of any electronically filed pleading, document, or proposed order on parties not registered for ECF according to the Federal Rules of Criminal Procedure.<sup>1</sup> When serving paper copies of documents that have been electronically filed, the filer shall include a copy of the Notice of Electronic Filing to provide the recipient with proof of the filing.

**F. Three-Day Rule.** The three-day rule in Fed.R.Crim.P. 45(c) for service by mail shall apply to service by electronic means.

**G. Paper Copies.** A filer who is permitted or required to file paper copies of documents shall file with the clerk's office the original, or file by facsimile in accordance with the local rules, and must also serve paper copies on all parties entitled to service or notice.

**ECF 5.8.****Oversized Electronic Documents; Exhibits to a Pleading, Motion, Brief, or Other Paper**

**A. Size.** The size limit for each PDF file/document filed in ECF shall be posted in the "Court Information" section on the opening page of the CM/ECF website. For the purpose

<sup>1</sup> A filer may check ECF to see if a party is registered to receive e-mail noticing before posting a filing in ECF. This can be accomplished by clicking on the Utilities menu choice. Under the miscellaneous heading, click on the Mailings link. Click on the Mailing Info for a Case link, enter the case number and click on the Submit button. If more than one case matches the case number, a case verification window may appear. The Electronic Mail Notice List and Manual Notice List appears.

of this procedure, each electronically filed pleading, motion, brief, or other paper, and each exhibit to the pleading, motion, brief, or paper (whether the exhibit is denominated by the filer as an exhibit, attachment, appendix, or otherwise) is a separate PDF file/document. Filing these files/documents in ECF requires use of ECF's attachment feature.

**B. Oversized Documents To Be Broken Into Separate Parts.** Any PDF file/document which exceeds the size limit shall be separated into electronic files under the size limit, and each file must then be filed in ECF.

1. **Oversized Pleading, Motion, Brief, or Other Paper.** If the oversized document is the pleading, motion, brief, or other paper being filed, the electronic PDF file containing the first part of the pleading, motion, brief, or other paper will be submitted as the main document (e.g., Brief in Support of Motion to Suppress), and the electronic PDF file(s) containing the remaining part(s) of the pleading, motion, brief, or paper will each be submitted as a separate ECF attachment(s) to the main document. The filer must label each part clearly when attaching it in ECF.

2. **Oversized Exhibits to an Electronically-Filed Pleading, Motion, Brief, or Paper.** If the oversized document is an exhibit to the pleading, motion, brief, or other paper being filed, the electronic PDF files containing the parts of the exhibit will be submitted as separate, successive ECF attachments to the main document. The filer must label each part clearly when attaching it in ECF.

**C. Exhibits to an Electronically Filed Pleading, Motion, Brief, or Paper.** Each exhibit referenced in a pleading, motion, brief or other electronic filing (whether the exhibit is denominated by the filer as an exhibit, attachment, appendix, or otherwise) shall be submitted to ECF as a separate ECF attachment to the main document, regardless of the size of the file containing the exhibit. The filer must label each exhibit clearly by using the "category" and "description" boxes, either together or separately, when attaching it in ECF. The label should accurately reflect the title of the document.

**D. Sample(s).** If the filer follows these procedures and the menus in ECF, the docket entry for an oversized document or for a pleading, motion, or brief with exhibits will appear as follows (hyperlinks bolded and underscored):

Sample Docket Entry:

01/21/2005	<u><b>185</b></u>	MOTION to Suppress Statements filed by Defendant John Doe Pages 1-50. (Attachments: <u><b>#1</b></u> Continuation of Main Document Motion to Suppress Statements Pages 51-70 <u><b>#2</b></u> Affidavit of John Smith <u><b>#3</b></u> Deposition Excerpts Jane Doe's Deposition <u><b>#4</b></u> Exhibit A Log Pages 1-15 <u><b>#5</b></u> Exhibit A Log Pages 16-24 <u><b>#6</b></u> Conventionally submitted Videotape Deposition of John Doe)(gms, ) (Entered: 01/21/2005)
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Sample of the screen viewed when the hyperlink to sample document #185 is clicked:



Document Selection Menu		
Select the document you wish to view.		
Document Number: 185		50 pages 2.5 mb
Attachment	Description	
1	Continuation of Main Document Motion to Suppress Statements Pages 51-70	19 pages 1.2 mb
2	Affidavit of John Smith	2 pages 0.5 mb
3	Deposition Excerpts Jane Doe's Deposition	3 pages 0.7 mb
4	Exhibit A Log Pages 1-15	15 pages 3.4 mb
5	Exhibit A Log Pages 16-24	9 pages 3.1 mb
6	Conventionally submitted Videotape Deposition of John Doe	1 page 0.2 mb
View All or Download All		99 pages 11.2 mb

**E. Color or Graphics.** Because documents scanned in color or containing graphics take longer to upload, filers must configure scanners to scan documents not in color at 200 dots per inch (dpi).

**F. Conventionally Submitted Materials.** A party may conventionally submit, without seeking leave of court, (1) exhibits or materials that cannot be converted to electronic form (e.g., video tape, audio tape, etc.) or (2) documents to be filed with the court, but not originating with an ECF filer (e.g., United States Marshal, a Pretrial or Probation officer, etc.). Conventionally submitted materials generated by ECF filers must be submitted according to the following procedure.

1. **Cover Page.** Conventionally submitted materials shall be submitted with a paper cover page containing the case caption, a description of the materials, and a designation of the pleading or motion to which the materials relate (e.g., "Videotape Deposition of John Doe, Exhibit 7 to Defendant's Motion to Suppress Statements"). The PDF version of the cover page shall be an ECF attachment to the electronically filed pleading, motion, or paper to which the materials relate. (See samples above.) A paper copy of the Notice of Electronic Filing of the ECF attachment shall also be submitted to the clerk's office with the materials.

2. **Receipt of Conventionally Submitted Materials.** The clerk's office will note in ECF its receipt of the conventionally submitted materials with a text-only entry.

3. **Service.** The filer must serve the conventionally submitted materials on all other parties. The Notices of Electronic Filing generated by the electronic filing of the cover page and by the court's text-only entry noting receipt of the materials shall not constitute service.

(Amended, effective February 23, 2012.)

**ECF 5.9.**  
**Trial Documents**

Trial documents such as proposed jury instructions, exhibit lists, and proposed voir dire questions shall be electronically filed in ECF so that their filing can be part of the official record. A judicial officer also may impose additional requirements to facilitate use of the documents at trial (e.g., require paper or require that a Word Perfect or Word version of the documents be submitted on disk or CD or sent to the chambers e-mail address listed in Appendix A). Any additional requirements may be found by reviewing the judicial officers'



procedures on the court's web site, <http://www.cod.uscourts.gov>. All versions of trial documents, including proposed jury instructions, submitted electronically to the judicial officer pursuant to this section must be in Word or WordPerfect format.

#### **ECF 5.10.**

##### **Docket Entries To Be Made by Filer**

**A. Title of Docket Entry.** The filer is responsible for designating an appropriate docket entry title by using one of the docket event categories prescribed by the court. If the filer is in doubt, he or she should contact the ECF help desk for assistance.

**B. Correction of Docket Entry.** After a document is filed in ECF, corrections to the docket can only be made by the clerk's office. ECF will not permit the filer to make changes to a document or docket entry after the transaction has been submitted.

#### **ECF 5.11.**

##### **Correction of Filings**

**A. Documents Filed in Error in Correct Case.** A document filed in error in the correct case (e.g., wrong version of the document attached, wrong event code, etc.) shall remain a part of the record as filed. Upon discovery of an error, the filer shall immediately post the correct document in the case in ECF, and modify the title of the pleading as appropriate (e.g., Amended).

**B. Document Filed in Wrong Case.** If a document is filed in the wrong case the filer shall:

1. call the Criminal Case Administrator (303/844-2115), and
2. file the document in the correct case.

(Amended, effective December 1, 2011.)

#### **ECF 5.12.**

##### **Proposed Orders**

##### **A. How to Submit to ECF.**

1. A proposed order shall be submitted electronically to ECF as an ECF attachment to the motion requesting the relief to be ordered.

a. The proposed order shall only be submitted when required by the local rules or the judicial officer procedures of the presiding judge.

b. If the proposed order is not attached when required, contact the ECF help desk.

2. If the proposed order does not require the filing of a motion, (e.g. Proposed Scheduling Order, etc.) it shall be submitted electronically as a separate ECF filing.

**B. Additional Submission to Judicial Officer.** Because the electronically-filed PDF document submitted to ECF cannot be changed by a judicial officer, the filer, after filing the proposed order in ECF, shall also submit the proposed order as follows:

**1. Word Processing Format.** A proposed order must be submitted in a Word Perfect or Word format. Judicial officers will not accept proposed orders in PDF format.

**2. E-Mail Transmission to Judicial Officer.** A proposed order shall be sent via e-mail to the chambers of the assigned district judge and magistrate judge. A proposed order shall be sent as an attachment to the e-mail. The subject line of the e-mail shall contain the case number, short title, the words "Proposed Order," and the docket number of the motion to which the proposed order relates (e.g., *USA v. Smith*, case number, Proposed Order re Docket Entry #85).

**3. E-Mail Addresses of Chambers.** Only proposed orders and any other documents specified by a judicial officer should be submitted via e-mail pursuant to this section. Any other submission will be considered to be ex parte and will not be reviewed. The chambers' e-mail addresses may be found in Appendix A.

**C. Signed Orders.** The clerk shall enter all signed orders on the docket in ECF.

**ECF 5.13.****Notice of Court Orders and Judgments**

Immediately upon the entry of an order or judgment on the docket in ECF, the clerk will transmit a Notice of Electronic Filing which constitutes the notice required under Fed.R.Crim.P. 32 and 49. The clerk shall give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Criminal Procedure.

**ECF 5.14.****Entry on Docket by Clerk**

**A. Fed.R.Crim.P. 32, 49, and 55.** All orders, decrees, judgments, and proceedings of the court filed in ECF shall constitute entry on the docket kept by the clerk under Fed.R.Crim.P. 32, 49, and 55.

**B. Same Force and Effect.** Any order or other court-issued document filed electronically without the manual signature of a judicial officer or clerk has the same force and effect as if the judicial officer or clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner.

**C. "Text Only Order" Docket Entry.** An order may be issued as a "text only order" entry on the docket, without an attached document. Such orders are official and binding. A judicial officer or the Clerk's office, if appropriate, may issue routine orders or notices by a "text only" docket entry for which ECF will generate a Notice of Electronic Filing and e-mail notification to parties in ECF. In such cases, no PDF document will be attached. The "text only order" will constitute the court's only documentation on the matter. Copies of a Notice of Electronic Filing for the "text only" docket entry will be sent in paper format to those not using ECF.

**ECF 5.15.****Appeals in General**

When a notice of appeal is filed in ECF, it is not necessary to provide the court with paper copies of the notice for service on the other parties. The Notice of Electronic Filing generated by the system will constitute the copy the clerk is required to serve under Fed. R. App. P. 3(d). See Section 5.4(B)(3). regarding filing fees.

**VI. PUBLIC ACCESS TO DOCUMENTS AND PROCEEDINGS****ECF 6.1.****Filing of Cases and Documents Under Restriction****A. Restricted Cases.**

**1. Commencing an Action.** When commencing an action either under restriction pursuant to statute or by filing a motion to restrict it shall be done in accordance with Section 5.4. of these procedures. A motion to restrict shall accompany the charging document at the time of filing or upon return by the Grand Jury.

**2. Appearance in Case.** After commencement of an action, an attorney or *pro se* party entering their appearance must file the initial document electronically.

**3. Filing Electronically.** Once commenced, except for the parties' initial filing, all subsequent documents shall be filed using ECF.

**4. Service of Documents.** Parties should not use the court's electronic notice facilities to serve documents in restricted cases. An NEF will not be sent on documents filed in restricted cases. Service should be made in accordance with the Federal Rules of Criminal Procedure and a certificate of mailing must be attached to the filed document.

**5. Viewing Restricted Cases.** Parties to the case and the court may view docket entries and documents in restricted cases.



**B. Document Restriction Level 1 (access limited to case participants and the court).**

**1. Filing Restricted Documents.** Any document ordered to be filed under restriction or a document where the filing party is contemporaneously filing a motion to restrict the document shall be filed using ECF.

The document should be filed using the docket event "Restricted Document level ....." (i.e., Level 1 = access limited to case participants and the court).

**2. Service of Documents.** An NEF will be sent on documents filed and access to the document is available via the NEF. If a party is not authorized to file electronically, service should be made in accordance with the Federal Rules of Criminal Procedure and a certificate of mailing must be attached to the filed document.

**3. Viewing Restricted Level 1 Documents.** Case participants and the court may view the document via the NEF.

**C. Document Restriction Level 2 (access limited to applicable parties and the court).**

**1. Filing Restricted Documents.** Any document ordered to be filed under restriction or a document where the filing party is contemporaneously filing a motion to restrict the document shall be filed using ECF.

The document should be filed using the docket event "Restricted Document level ....." (i.e., Level 2 = access limited to the applicable parties and the court).

**2. Service of Documents.** An NEF will be sent on documents filed and the applicable parties and the court may access the document via the NEF. If a party is not authorized to file electronically, service should be made in accordance with the Federal Rules of Criminal Procedure and a certificate of mailing must be attached to the filed document.

**3. Viewing Restricted Level 2 Documents.** Applicable parties and the court may view the document via the NEF.

**D. Document Restriction Level 3 (access limited to the filer and the court).**

**1. Filing Restricted Documents.** Any document ordered to be filed under restriction or a document where the filing party is contemporaneously filing a motion to restrict the document shall be filed using ECF.

The document should be filed using the docket event "Restricted Document level ....." (i.e., Level 3 = access limited to the filer and the court).

**2. Service of Documents.** An NEF will be sent on documents filed and the filing party and the court may access the document via the NEF. If a party is not authorized to file electronically, service should be made in accordance with the Federal Rules of Criminal Procedure and a certificate of mailing must be attached to the filed document.

**3. Viewing Restricted Level 3 Documents.** The filer and the court may view the document via the NEF.

**E. Document Restriction Level 4 (access limited to the court).**

**1. Filing Restricted Documents.** Any document ordered to be filed under restriction or a document where the filing party is contemporaneously filing a motion to restrict the document shall be filed using ECF.

The document should be filed using the docket event "Restricted Document level ....." (i.e., Level 4 - access limited to the court).

**2. Service of Documents.** An NEF will be generated for the restricted document but the parties will not have access via the NEF. Service should be made in accordance with the Federal Rules of Criminal Procedure and a certificate of mailing must be attached to the filed document.

**3. Viewing Restricted Level 4 Documents.** The court may view the document via the NEF.

**F. Exceptions.** Document types such as search warrants, pen registers, wiretaps and other documents noted in D.C.Colo.LCivR 47.1 should be presented to the court in paper format or via secure electronic means. A judicial officer may direct the submission of documents using normal restricted case ECF procedures, or may otherwise handle and address the document as deemed most appropriate.



(Amended, effective December 1, 2011.)

### **ECF 6.2. CJA Submissions**

A party who seeks to submit or file a document without giving notice to other parties should file the document electronically.

**A. Filing of CJA Documents.** Any CJA forms and supporting documents to be filed pursuant to representation under the Criminal Justice Act must be filed using the appropriate CJA document docket event, and will be treated as a restricted level 3 document under these procedures. CJA forms should be filed using the docket events available for these documents (e.g., CJA Form 21).

**B. Service of Documents.** An NEF will be generated for the restricted document and the filer and the court may view the document via the NEF. The NEF will only contain the statement "Restricted Document Level 3," or the name of the CJA form. Service should be made in accordance with the Federal Rules of Criminal Procedure and a certificate of mailing must be attached to the filed document.

**C. Viewing CJA Submissions.** The filing party and the court may view the CJA documents via the NEF.

(Amended, effective December 1, 2011.)

### **ECF 6.3. Documents Submitted for In Camera Review**

A party who seeks to present a document to a judicial officer for in camera review, whether acting on the party's own initiative or pursuant to a court order, shall present the document to the judicial officer by mailing or hand delivering the document to the clerk's office for the judicial officer in paper.

**A. Label.** Any document submitted pursuant to this subsection must be clearly labeled "for in camera review."

**B. Judicial Officer.** A judicial officer who receives a document submitted for in camera review may direct the party who submits it to file the document electronically, using normal ECF procedures, or may otherwise handle and address the document as deemed most appropriate.

### **ECF 6.4. Grand Jury Matters**

All grand jury matters which are restricted by law or court order shall not be publicly accessible via ECF. Documents in grand jury matters shall be filed according to section 6.1(A) of these procedures.

(Amended, effective December 1, 2011.)

### **ECF 6.5. Juvenile Matters**

All juvenile criminal matters which are restricted shall not be publicly accessible via ECF. Documents in juvenile criminal matters shall be filed according to Section 6.1(A) of these procedures.

(Amended, effective December 1, 2011.)

### **ECF 6.6. Documents Unavailable for Public Review**

The following documents are restricted and shall not be publicly available for review:

- psychiatric and psychological reports or medical records, including those regarding treatment or diagnosis;

- unexecuted summonses or warrants of any kind (e.g., search warrants, arrest warrants);
- pretrial bail or presentence investigation reports;
- juvenile records;
- financial affidavits filed in seeking representation pursuant to the Criminal Justice Act; and
- restricted requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act.

(Amended, effective December 1, 2011.)

## **VII. POST-JUDGMENT PROCESS**

Parties needing to have writs and other post-judgment process issued by the court shall submit the items electronically to [crnewcases@cod.uscourts.gov](mailto:crnewcases@cod.uscourts.gov) in PDF format. If appropriate for issuance, the clerk shall sign, seal, and return the documents to the filing party for service.

## **VIII. HYPERLINKS**

### **ECF 8.1.**

#### **Types of Hyperlinks**

Electronically filed documents may contain the following types of hyperlinks:

- A. hyperlinks to other portions of the same document; and
- B. hyperlinks to a location on the Internet that contains a source document for a citation.

### **ECF 8.2.**

#### **Standard Citation Format Required**

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document.

### **ECF 8.3.**

#### **Limitation**

Neither a hyperlink, nor any site to which it refers, shall be considered part of the official record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document.

### **ECF 8.4.**

#### **Disclaimer**

The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

## **IX. PRIVACY POLICY**

See Federal Rule of Criminal Procedure 49.1.

See General Order 2007-3.

## **X. PUBLIC ACCESS TO ECF**

### **ECF 10.1.**

#### **Access at the Clerk's Office**

Access to ECF is available to the public at no charge at the clerk's office during regular business hours.

**ECF 10.2.****Paper Copies and Certified Copies**

Paper copies and certified copies of electronically filed documents may be purchased at the clerk's office. The fee for copying and certifying will be in accordance with 28 U.S.C. § 1914.

**ECF 10.3.****Internet Access**

Remote electronic access to ECF is limited to subscribers to PACER. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as filed documents and docket sheets in civil cases. Any member of the public may apply for a PACER account.





## **XII. APPENDICES AND ATTACHMENTS**

### **Appendix A. Judicial Officer E-mail Addresses.**

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#### **JUDICIAL OFFICER**

Chief Judge Wiley Y. Daniel  
Senior Judge Richard P. Matsch  
Senior Judge John L. Kane  
Senior Judge Lewis T. Babcock  
Judge Marcia S. Krieger  
Judge Robert E. Blackburn  
Judge Phillip A. Brimmer  
Judge Christine M. Arguello  
Judge William J. Martinez  
Judge R. Brooke Jackson  
Senior Circuit Judge David M. Ebel  
Magistrate Judge Michael J. Watanabe  
Magistrate Judge Boyd N. Boland  
Magistrate Judge Craig B. Shaffer  
Magistrate Judge Michael E. Hegarty  
Magistrate Judge Kristen L. Mix  
Magistrate Judge Kathleen M. Tafoya  
Magistrate Judge Gudrun J. Rice  
Magistrate Judge David L. West

#### **E-MAIL ADDRESS**

Daniel\_Chambers@cod.uscourts.gov  
Matsch\_Chambers@cod.uscourts.gov  
Kane\_Chambers@cod.uscourts.gov  
Babcock\_Chambers@cod.uscourts.gov  
Krieger\_Chambers@cod.uscourts.gov  
Blackburn\_Chambers@cod.uscourts.gov  
Brimmer\_Chambers@cod.uscourts.gov  
Arguello\_Chambers@cod.uscourts.gov  
Martinez\_Chambers@cod.uscourts.gov  
Jackson\_Chambers@cod.uscourts.gov  
Ebel\_Chambers@ca10.uscourts.gov  
Watanabe\_Chambers@cod.uscourts.gov  
Boland\_Chambers@cod.uscourts.gov  
Shaffer\_Chambers@cod.uscourts.gov  
Hegarty\_Chambers@cod.uscourts.gov  
Mix\_Chambers@cod.uscourts.gov  
Tafoya\_Chambers@cod.uscourts.gov  
Rice\_Chambers@cod.uscourts.gov  
West\_Chambers@cod.uscourts.gov

Proposed orders for visiting judges should be submitted pursuant to the home court preferences of the visiting judge.

---

**ECF Form 1.**  
**Application of Attorney to File Documents in Paper.**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

**APPLICATION OF ATTORNEY TO FILE DOCUMENTS IN PAPER**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Please list pending cases in which you have entered an appearance:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State reasons why at this time you should be exempted from filing electronically in accordance with the court's Electronic Case Filing Procedures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

State when you anticipate being prepared to file electronically:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note: If this request is approved you will be required to file an original and two copies of all documents in accordance with the court's Local Rules.**

Submit request in duplicate to:

Clerk, United States District Court  
Electronic Filing Registration  
901 19<sup>th</sup> Street, Room A-105  
Denver, Colorado 80294-3589

**You will be notified in writing of the court's determination.**



ECF Form 2.

Sample Formats - Certificate of Service (CM/ECF).

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

SAMPLE FORMATS - CERTIFICATE OF SERVICE (CM/ECF)

Sample A

I hereby certify that on \_\_\_\_\_ Date \_\_\_\_\_, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, and I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

s/ \_\_\_\_\_  
Attorney Name  
Attorney for (Plaintiff/Defendant)  
Law Firm Name  
Law Firm Address  
Law Firm Phone Number  
Law Firm Fax  
Attorney's E-mail Address

Sample B

I hereby certify that on \_\_\_\_\_ Date \_\_\_\_\_, I presented the foregoing to the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following e-mail addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, and I hereby certify that I have mailed or served the document or paper to the following participants in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

s/ \_\_\_\_\_  
Attorney Name  
Attorney for (Plaintiff/Defendant)  
Law Firm Name  
Law Firm Address  
Law Firm Phone Number  
Law Firm Fax  
Attorney's E-mail Address



**UNITED STATES  
BANKRUPTCY COURT  
DISTRICT OF COLORADO  
LOCAL  
BANKRUPTCY  
RULES, FORMS  
AND APPENDIX**

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December 1, 2009

(Containing Revisions Applied by  
General Procedure Order 2010-1  
through January 20, 2013)



UNITED STATES  
BANKRUPTCY COURT  
DISTRICT OF COLORADO  
LOCAL  
BANKRUPTCY  
RULES FOR  
AND APPLICANTS

ADOPTED BY THE COURT  
ON SEPTEMBER 15, 1983  
BY ORDER OF THE COURT  
JAMES H. HARRIS, JR.  
CLERK OF COURT

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# LOCAL BANKRUPTCY RULES AND PROCEDURES

## LOCAL BANKRUPTCY RULE 1001-1. SCOPE OF RULES

(a) **General Applicability:** These rules and forms supplement the Federal Rules of Bankruptcy Procedure ("FED. R. BANKR. P.") and the Bankruptcy Official Forms ("Official Forms") and govern practice and procedure in the United States Bankruptcy Court for the District of Colorado.

(b) **Applicability of Rules to Persons Appearing without Counsel:** Individuals who appear before the court who are not represented by an attorney are bound by the L.B.R. and any reference to "attorney" applies to individuals who are not represented by an "attorney" unless otherwise noted.

(c) **Citation to the Rules:** The rules are to be cited as the Local Bankruptcy Rules ("L.B.R."), the forms as the Local Bankruptcy Forms ("L.B. Forms"), and the appendix as the Local Bankruptcy Rules Appendix ("L.B.R. \_\_\_\_ App.").

(d) **Uniform Numbering System:** The numbering system in these L.B.R. and L.B. Forms is based on the Uniform Numbering System for Local Bankruptcy Court Rules developed by the Judicial Conference Advisory Committee on Bankruptcy Rules. Any gaps in the numbering system are intentional.

(e) **Reference to Debtor:** Any reference to "debtor" in the L.B.R. and L.B. Forms includes both "debtors" in a joint case.

(f) **Prior Rules; Actions Pending on Effective Date.** These Local Bankruptcy Rules supersede all previous Local Bankruptcy Rules and General Procedure Orders promulgated by the court prior to the Effective Date of December 1, 2009, except as otherwise ordered. They shall govern all cases or proceedings pending on or filed after the Effective Date, unless the court finds they would not be feasible or would work an injustice.

### Commentary

[Source: COB LBR 101 and C.D. Cal]

## LOCAL BANKRUPTCY RULE 1002-1. MINIMUM INITIAL FILING REQUIREMENTS ON PETITION DATE

(a) **Initial Filing Requirements:** Along with the submission of a voluntary petition, Official Form 1, the debtor must also complete and file the following:

(1) *Cover Sheet:* In paper filed cases only, a cover sheet in substantial conformity with L.B. Form 1002-1.1.

(2) *Certificate of Credit Counseling:* In the event the debtor is an individual,

(A) the debtor's Certificate of Credit Counseling evidencing that the debtor has complied with the credit counseling requirements set forth in 11 U.S.C. § 109(h)(1), or

(B) a written explanation as to why a temporary exemption or exception should apply under 11 U.S.C. § 109(h)(3) or (4) shall be provided on the Official Form Exhibit D.

(3) *Filing Fees:* Pay the applicable filing fee in full. If the debtor is an individual, the debtor may file an application to pay the filing fee in installment payments or an application for a waiver of the filing fee. See 28 U.S.C. § 1930, FED. R. BANKR. P. 1006 and applicable Official Forms for further information on filing fees.

(4) *Statement of Social Security Number*: In the event the debtor is an individual, Official Form 21 - Statement of Social Security number. See L.B.R. 1007-5 for further information on Social Security numbers and privacy.

(5) *Creditor Address Mailing Matrix*: A proper Creditor Address Mailing Matrix. See 11 U.S.C. § 521(a)(1), FED. R. BANKR. P. 1007(a)(1), L.B.R. 1007-2 and L.B.R. 1007-2App. for further information on filing a proper Creditor Address Mailing Matrix.

(6) *List of 20 Largest Unsecured Creditors*: For a petition under chapter 9 or a voluntary chapter 11, the list containing the name, address and estimated claim of the creditors that hold the 20 largest unsecured claims as required by FED. R. BANKR. P. 1007(d).

**(b) Notice of Non-Filing and Return of Deficient Petition**: The Clerk may decline to accept for filing any bankruptcy petition tendered in paper for filing that does not contain the minimum requirements as stated in L.B.R. 1002-1(a).

#### Commentary

[Source: L.B.R. 102, Transitional Local Bankruptcy Form 1002-1, Transitional Local Bankruptcy Form 1007-1, and GPO 2002-2]

See L.B.R. 1017-3 for information on dismissal for failure to file documents and the United States Trustee's Standing Motion to Dismiss.

A schedule of the current fees can be found at the bankruptcy court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov).

### LOCAL BANKRUPTCY RULE 1007-1.

#### LISTS, SCHEDULES, STATEMENTS & OTHER DOCUMENTS

FED. R. BANKR. P. 1002 through 1008 govern the documents required to be filed at or near the commencement of a case. L.B.R. 1007-1App. contains a list, in proper sequence, of the documents required to be filed to constitute a complete bankruptcy filing. L.B.R. 1007-1App. also includes references to applicable Official Forms, Director's Procedural Forms and L.B. Forms.

#### Commentary

[Source: T.L.B.R. 1007-1]

### LOCAL BANKRUPTCY RULE 1007-2.

#### CREDITOR ADDRESS MAILING MATRIX

**(a) Content**: The debtor must file a verified list of creditors, referred to as the Creditor Address Mailing Matrix, pursuant to 11 U.S.C. § 521(a)(1)(A) in the form and manner described in L.B.R. 1007-2App. The debtor must file a Verification of Creditor Address Mailing Matrix in substantial conformity with L.B. Form 1007-2.1.

**(b) Assignment**: In addition to the requirements of FED. R. BANKR. P. 1007(a), if an assignment of the account or debt is known to the person verifying such information, the full names and addresses of both the original creditor and assignee must be listed. If the debt is in the hands of an attorney or other agent for collection, the full names and addresses of both the creditor and attorney or other agent should be listed, if known.

**(c) Amendments**: See L.B.R. 1007-2App. and L.B.R. 1009-1 for information on amendments to the schedules and Creditor Address Mailing Matrix.

#### Commentary

[Source: L.B.R. 107(c)]

**LOCAL BANKRUPTCY RULE 1007-4.  
FINANCIAL DISCLOSURE BY CORPORATE DEBTOR**

(a) The following financial disclosures are required of corporate debtors:

(1) Corporate Ownership Statement pursuant to FED. R. BANKR. P. 1007(a)(1) in substantial conformity with L.B. Form 1007-4.1.

(2) List of Equity Interest Holders pursuant to FED. R. BANKR. P. 1007(a)(3) in substantial conformity with L.B. Form 1007-4.2.

[Amended January 16, 2013, effective February 1, 2013.]

**Commentary**

[Source: New.]

See FED. R. BANKR. P. 7007.1 and L.B.R. 7007.1-1 for additional information on filing a Corporate Ownership Statement in adversary proceedings.

**LOCAL BANKRUPTCY RULE 1007-5.  
SOCIAL SECURITY NUMBER (PRIVACY)**

(a) **Petition:** When filing the petition electronically, the electronic filer must enter the debtor's full Social Security number when opening a case, but must include only the last four digits on the petition, Official Form 1.

(b) **Statement of Social Security Number:**

(1) *Official Form 21:* All voluntary petitions in individual debtor cases must be accompanied by the filing of

(i) Official Form 21, Statement of Social Security number, in conventional paper format; or

(ii) For petitions that are filed electronically, Official Form 21, using the proper secured event to prevent public access to the form.

(2) *Receipt:* A receipt of the Statement of Social Security number will be entered on the docket, but will not be available for public inspection at the court or over the internet.

(3) *Amended Statement of Social Security Number:*

(i) *Correction:* An incorrect Social Security number must be corrected by the debtor by submitting an Amended Statement of Social Security number. The Amended Statement must include the originally submitted and the correct Social Security numbers and must be filed within seven (7) days of the debtor discovering or being informed of the error.

(ii) *Service:* Filed with the Amended Statement or not later than three (3) court days of filing the Amended Statement of Social Security number as prescribed above, the debtor must file a certificate of service evidencing service of the Amended Statement of Social Security number on the United States Trustee, the trustee, and all creditors.

(4) *Failure to File the Statement of Social Security Number:* Failure to file or serve the Statement of Social Security number, or any amendment thereto, in accordance with this L.B.R. may result in dismissal of the case.

(c) **Proof of Claim Form:** Creditors claiming wages owed from the debtor should disclose only the last four digits of their Social Security number on Official Form 10, Proof of Claim.

(d) **Redaction of Personal Identifiers:** It is the responsibility of any party filing documents with the court, not the Clerk, to redact Social Security numbers and other personal identifiers such as dates of birth, financial account numbers, and names of minor children. This includes copies of employee payment advices, tax returns, or other financial documents that may be filed or attached as an exhibit to documents filed with the court. In the event a petition or other document is tendered for filing that bears the entire Social Security number of the debtor, the Clerk will file said petition or document as tendered without taking any action to redact the first five digits of the Social Security number.



### Commentary

[Source: L.B.R. 107(c) and GPO 2003-4]

See L.B.R. 4002-1 for privacy of tax return information and L.B.R. 9004-2 for information on captions.

See also FED. R. BANKR. P. 1009 and FED. R. BANKR. P. 9037.

## LOCAL BANKRUPTCY RULE 1007-6. EMPLOYEE PAYMENT ADVICES

(a) **Filing Requirement:** The debtor must file the required payment advices pursuant to 11 U.S.C. § 521(a)(1)(B)(iv) or a statement as to why the debtor has not complied. The statement must be in substantial conformity with L.B. Form 1007-6.1.

(b) **Failure to File Any Payment Advices:** If no payment advices are filed with the petition and the debtor has not filed a statement in substantial conformity with L.B. Form 1007-6.1, the court may issue a notice of deficiency. The failure to cure the deficiency may result in the dismissal of the case pursuant to 11 U.S.C. § 521(i) and L.B.R. 1017-3.

(c) **Motions or Objections Regarding Filed Payment Advices:** All parties in the case have until the latter of forty-five (45) days after the petition is filed, or thirty (30) days after the payment advices are filed, to file a motion to modify a docket entry that states a payment advice was filed or to challenge the court's acceptance of documents in satisfaction of the payment advice filing requirement. The failure to timely file such a motion or challenge will result in the documents being deemed accepted and sufficient in satisfaction of the filing requirement in 11 U.S.C. § 521(a)(1)(B)(iv), unless otherwise ordered by the court.

### Commentary

[Source: Paragraphs (a) and (b) are new. Paragraph (c) is from GPO 2006-2]

## LOCAL BANKRUPTCY RULE 1007-7. CHAPTER 11 RECEIVERS

(a) **Filing Requirement:** A Chapter 11 debtor shall file, with the petition, a statement regarding whether a receiver is in possession of all or any part of the debtor's property, in substantial conformity with L.B. Form 1007-7.1.

[Adopted January 16, 2013, effective February 1, 2013.]

### Commentary

[Source: New]

Failure to comply with this Rule may be grounds for conversion or dismissal under 11 U.S.C. § 1112(b)(4)(F) or other cause.

## LOCAL BANKRUPTCY RULE 1009-1. AMENDMENTS TO LISTS & SCHEDULES

(a) **Amendments to Add Creditors or Other Information:** An amendment to Schedules D, E, F, G and H pursuant to FED. R. BANKR. P. 1009 must be:

(1) shown on a schedule separate from the schedule originally filed; or

(2) highlighted, i.e., marked by an asterisk, underscored, etc., if such amendment has been incorporated in a revised edition of the schedule originally filed; and

(3) shown on an amended Creditors Address Mailing Matrix in the form and manner described in L.B.R. 1007-2 and L.B.R. 1007-2App that is separate and apart from any other Creditor Address Mailing Matrix previously filed in the case; and

(4) must be accompanied by payment of any fee prescribed by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b).

**(b) Notice of Amendment:** In addition to the requirements of 11 U.S.C. § 342(c)(1) and FED. R. BANKR. P. 1009(a), upon the filing of an amendment adding creditors or parties in interest, the debtor must mail to the newly added creditors or parties a copy of the following documents:

- (1) the amended schedule,
- (2) the Notice of Amendment to Schedule, L.B. Form 1009-1.1,
- (3) the Notice of Meeting of Creditors, and
- (4) any notice of possible dividend or notice of a bar date for filing proofs of claim, along with a proof of claim form.

**(c) Certificate of Service:** The debtor must file a certificate of service showing compliance with this L.B.R. with the amendment or not later than three (3) court days of filing the amendment. The Notice of Amendment to Schedule, L.B. Form 1009-1.1 must be attached to the Certificate of Service filed with the court.

**(d) Creditor Requests to Modify Creditor Address Mailing Matrix:** If a creditor wishes to modify the address listed in the schedules or on the Creditor Address Mailing Matrix the creditor may file or modify a proof of claim or file a notice of change of address and mail a copy to the debtor and debtor's counsel.

### Commentary

[Source: D. Colo. 109 and GPO 2005-1]

## LOCAL BANKRUPTCY RULE 1015-1. JOINT ADMINISTRATION

**(a) Motions:** On motion of any party in interest, on notice to the United States trustee, any case trustee, and such further notice as the court may direct, separate cases enumerated in FED. R. BANKR. P. 1015(b) may, upon order of the court, be jointly administered.

**(b)** Any motion for joint administration pursuant to FED. R. BANKR. P. 1015(b) involving two or more petitions pending in the same court by or against (i) a partnership and one or more of its general partners, (ii) two or more general partners, or (iii) a debtor and an affiliate must include a short and concise statement setting forth the reasons that granting the motion for joint administration will aid in expediting the administration of the cases and rendering the process less costly.

**(c) Order:** Parties seeking joint administration must submit a proposed order in substantial conformity with L.B. Form 1015-1.1.

**(d) Notice:** When an order granting joint administration is entered, the Clerk, or such other person as the court may direct, must provide notice to all creditors and parties in interest that the administrative procedures listed below apply. The court may, in its discretion, order that the debtor(s) maintain a comprehensive service list of creditors from all jointly administered estates.

(1) Unless otherwise ordered, jointly administered cases will be reassigned to the judge to whom the lower-numbered (first) case was assigned. The lower-numbered case will be known as the "lead case."

(2) Unless otherwise ordered, all motions, pleadings, and other documents filed in the jointly-administered case shall bear a combined caption which includes the full name and number of each specific case as in Official Bankruptcy Form 16A, and must be filed, docketed and processed in the lead case, except for the following:

(A) a motion which applies to less than all jointly administered debtors must clearly indicate in the caption and title to which debtor(s) the motion applies, but must still be filed in the lead case;

(B) all proofs of claim must be filed in the specific case to which they apply;

(C) monthly financial reports must be filed in the specific case to which they apply; and

(D) amendments to schedules, statements, lists and other required documents in FED. R. BANKR. P. 1002 and 1007 must be filed in the specific case to which the amendments apply.



(e) This L.B.R. does not affect the substantive issues of the jointly-administered estates, either individually or collectively, nor does it affect the requirements of FED. R. BANKR. P. 2009.

[Amended January 16, 2013, effective February 1, 2013.]

### Commentary

This Rule is intended to deal with joint administration, as opposed to substantive consolidation.

The Court will not approve joint administration if the Court anticipates that joint administration will have an adverse impact on the substantive rights of the claimants, other interested parties, and the respective debtor estates.

By way of example, issues that may impact substantive rights in joint administration include:

a. Confusion in cash management, including obtaining credit pursuant to 11 U.S.C. § 364 and use of cash collateral under FED. R. BANKR. P. 4001. Counsel for jointly administered debtors must ensure that cash management between and amongst debtors respects corporate distinctions.

b. Failure by counsel for the debtor(s) to properly allocate fees and costs to the applicable debtor. Fee applications filed in jointly administered cases must designate the entity to which the fees and costs are attributable.

c. Notification to claimants and other interested parties of claims filing and management amongst affiliated debtors. Counsel for jointly administered debtors must, consistent with L.B.R. 1015-1(d)(2)(B), take appropriate steps to notify creditors and other interested parties of the entity to which their claim may be applicable.

## LOCAL BANKRUPTCY RULE 1017-1. DEBTOR'S REQUEST FOR, NOTICE OF, CONVERSION

### (a) Conversion From Chapter 7 to Chapter 11, 12 or 13:

(1) *No Prior Conversion:* To convert a case from chapter 7 to chapter 11, 12 or 13 pursuant to 11 U.S.C. § 706(a), where eligible, the debtor must file a Motion for Voluntary Conversion in accordance with Fed. R. Bankr. P. 1017(f)(2), whereupon the Clerk will, if the case has not been previously converted under 11 U.S.C. §§ 1112, 1208 or 1307, enter a virtual text order effecting the conversion.

(2) *Prior Conversion:* In the event that the case has been previously converted, the debtor must comply with 11 U.S.C. § 706(c) and file a motion for conversion with notice to creditors pursuant to L.B.R. 9013-1.

### (b) Conversion From Chapter 11 to Chapter 7:

(1) *Generally:* The debtor, where eligible, must file a Motion for Voluntary Conversion. Upon receipt of the application fee, the Clerk may then enter a virtual order converting the case.

(2) *Limitations:* Where the provisions of 11 U.S.C. § 1112(a) apply, the debtor must file a Motion for Voluntary Conversion with notice pursuant to L.B.R. 9013-1.

(c) **Fees:** The court will not act upon motion to convert until all required fees pursuant to 28 U.S.C. § 1930 have been paid.

(d) **Reconsideration:** Any party in interest may file a motion to reconsider the conversion of the case within the time specified by FED. R. BANKR. P. 9023 and 9024.

### Commentary

[Source: L.B.R. 117 and GPO 2003-6]

A schedule of the current fees can be found at the bankruptcy court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov).

This L.B.R. is intended to address issues raised by *Marrama v. Citizens Bank of Massachusetts* (In re Marrama), 127 S.Ct. 1105 (2007).



Where debtor is seeking conversion for a second time, *see In re Murth*, 378 B.R. 302 (Bankr. D. Colo 2007); but *see In re Johnson*, 376 B.R. 763 (Bankr. D. N.M. 2007).

**LOCAL BANKRUPTCY RULE 1017-2.  
DISMISSAL OR SUSPENSION - CASE OR PROCEEDING**

**(Failure to Provide Tax Returns)**

(a) **Motion to Dismiss Pursuant to 11 U.S.C. § 521(e)(2):** If the debtor fails to provide the trustee or timely requesting creditor with the federal income tax return or transcript under 11 U.S.C. § 521(e)(2)(A), the trustee or requesting creditor may file a combined motion to dismiss and notice in substantial conformity with L.B. Form 1017-2.1.

(b) **Service and Notice:** The motion and notice must be served on the debtor, debtor's counsel, the case trustee and the United States Trustee. Pursuant to FED. R. BANKR. P. 9006(c), the time to object to the Motion is fourteen (14) days. The notice must include a specific objection deadline.

(c) **Objection:** The debtor's objection must explain why the failure to provide tax returns was not within the debtor's control as required by 11 U.S.C. § 521(e)(2).

(d) **Order and Hearing:** If no objection is filed, the court may enter an order granting the Motion upon the filing of a Certificate of Noncontested Matter, L.B. Form 9013-1.3 and the case will be dismissed. If an objection is filed, the court may set the matter for a hearing upon the filing of a Certificate of Contested Matter, L.B. Form 9013-1.4.

**Commentary**

[Source: L.B.R. 117 and T.L.B.R. 1017]

See FED. R. BANKR. P. 4002 and 9037 and L.B.R. 1007-5 and 4002-1 for privacy of tax return information.

**LOCAL BANKRUPTCY RULE 1017-3.  
DISMISSAL OR SUSPENSION - CASE OR PROCEEDINGS**

**(Failure to File Documents and the United States Trustee's  
Standing Motion to Dismiss)**

**(a) Deficient Filings:**

(1) *"Deficiency" Defined:* A filing to commence a bankruptcy case is deemed to be "deficient" if the lists, schedules, statements and other required documents to commence a case are not filed in compliance with, and in the time specified in, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and these L.B.R. and L.B. Forms, including applicable appendices attached hereto.

(2) *Cause for Dismissal:* In the event a case is deficient, such deficient filing may constitute cause for dismissal.

(3) *Standing Motion to Dismiss by United States Trustee:* The United States Trustee has filed with the court a document entitled United States Trustee's Standing Motion to Dismiss Deficient Case (the "Standing Motion to Dismiss," L.B.R. 1017-3App.). The Standing Motion to Dismiss applies to a deficient case filed with the Clerk.

(4) *Notice:* In the event a deficient voluntary case is filed, the Clerk may provide notice of the deficiency and Standing Motion to Dismiss. Notice to the debtor and the debtor's attorney will be served to the addresses shown on the petition.

(5) *Objections:* Any party desiring to object to the dismissal of the case under this provision may do so by filing an objection and request for hearing in accordance with L.B.R. 9013-1 within the time fixed for the curing of deficiency as set forth in the notice of deficiency, or such other time as may be fixed by the court.

(6) *Dismissal Order:* A deficient voluntary case may be dismissed unless the deficiency is timely cured or an objection is filed. Notice to the creditors and other interested parties of the dismissal will be served by the Clerk to the addresses of the

creditors and other interested parties, if any, as shown on the Creditor Address Mailing Matrix.

#### Commentary

[Source: L.B.R. 505, GPO 2002-2 and GPO 2002-4.]

See L.B.R. 1002-1 and 1007-1 for initial filing requirements.

See L.B.R. 2081-3 for motions to dismiss chapter 11 cases.

See L.B. Forms 1017-3.1 and 1017-3.2 for dismissal of chapter 13 cases.

Note the difference between the Clerk rejecting a filing for failing to meet the minimum documentation requirements of L.B.R. 1002-1(b) versus accepting the filing but issuing a notice of deficiency pursuant to L.B.R. 1017-3.

### LOCAL BANKRUPTCY RULE 1019-1. PROCEDURE FOLLOWING CONVERSION TO CHAPTER 7

**(a) Schedule of Unpaid Post-Petition Debts:** The party filing the schedule of unpaid debts required by FED. R. BANKR. P. 1019(5), must give written notice by mailing a copy of the schedule to:

- (1) the United States Trustee;
- (2) the trustee assigned to the case;
- (3) each entity named therein;
- (4) the United States; and
- (5) any state or any subdivision thereof wherein the debtor transacted business.

**(b) Notice:** The notice must include a statement advising that creditors scheduled therein may file a proof of claim in accordance with FED. R. BANKR. P. 3001(a) through (d) and 3002.

**(c) Certificate of Service:** The party filing the schedule of unpaid debts must file a certificate of service showing compliance with this L.B.R. with the schedule or not later than three (3) court days of filing the schedule.

#### Commentary

[Source: L.B.R. 119]

### LOCAL BANKRUPTCY RULE 1073-1. ASSIGNMENT OF CASES

**(a) Assignment of Cases:** Cases are assigned to judges by random selection to the extent possible.

**(b) Related Cases:** A case related to another pending case may be assigned or re-assigned to the judge with the earliest filed case. A case is "related" to another case if one of the debtors in one case is an "affiliate" or an "insider" of a debtor in another case, as those terms are defined in 11 U.S.C. § 101.

**(c) Sequential Cases:** If the debtor has filed a bankruptcy case in the previous eight years, the Clerk may reassign the case to the judge to whom the previous bankruptcy case was assigned.

#### Commentary

[Source: GPO 1996-1, 3rd Amended]

### LOCAL BANKRUPTCY RULE 2002-1. NOTICE TO CREDITORS & OTHER INTERESTED PARTIES

**(a) Who Must Give Notice:** Unless otherwise ordered, the movant or applicant must give the notices required by FED. R. BANKR. P. 2002.

**(b) Content of Notice:** Notices must:

- (1) be in substantial conformity with L.B. Form 9013-1.1;
- (2) contain a specific statement describing the requested relief or intended action to be taken, in sufficient detail to meaningfully inform the parties receiving the notice;
- (3) contain the specific date of the deadline to object and request a hearing, not just the number of days, which must be a date on which the court is scheduled to be open for business; and
- (4) comply with FED. R. BANKR. P. 2002(c).

**(c) Creditor Address Mailing Matrix:** For notice to all creditors and parties in interest, the movant must use, at a minimum, all of the addresses contained on the most current version of the Creditor Address Mailing Matrix.

**(d) Designation of Preferred Creditor Addresses:** The court designates any entity approved by the Administrative Office of the United States Courts as a notice provider to support the preferred address requirements under U.S.C. § 342(f) and FED. R. BANKR. P. 2002(g)(4).

### Commentary

[Source: L.B.R. 202 and T.L.B.R. 2002-1]

See L.B.R. 1007-2App for Instructions Regarding Creditor Address Mailing Matrix.

In addition to the FED. R. BANKR. P., the mechanism for bringing motions before the court, providing notice and effecting service is set out in L.B.R. 9013-1.

Parties are advised to be mindful of the distinction between notice (as required for parties covered by FED. R. BANKR. P. 2002) and service (as required for parties against whom relief is sought and as described in L.B.R. 9013-1 and other FED. R. BANKR. P., including Rules 9014 and 7004).

Parties seeking expedited hearings on motions brought immediately after the filing of a chapter 11 petition should refer to L.B.R. 2081-1.

## LOCAL BANKRUPTCY RULE 2003-1. MEETING OF CREDITORS & EQUITY SECURITY HOLDERS

**(a) Debtor's Request for Continuance of 11 U.S.C. § 341 Meeting of Creditors Prior to Scheduled Meeting:** A debtor's request for a continuance of the meeting of creditors must be in writing and served on the appropriate trustee no less than seven (7) days prior to the date and time of the scheduled meeting. A request for a continuance is not filed with the court. If a trustee consents to the continuance, the debtor must immediately file a notice of continued meeting with the court, serve a copy of the notice on the trustee and all creditors and parties in interest, and file a certificate of service with the court evidencing same.

**(b) Continuance of 11 U.S.C. § 341 Meeting of Creditors At the Scheduled Meeting:** In the event an 11 U.S.C. § 341 meeting of creditors is continued at the scheduled meeting, no later than three (3) court days following the date first set for the meeting of creditors or any subsequent continued meeting date, the chapter 7 trustee or chapter 13 trustee, as applicable, must file an electronic docket entry indicating that the meeting is continued and the date and time of the continued meeting.

**(c) Continuance of §§ 522, 523 and 727 Deadlines:** A continuance of the meeting of creditors does not automatically continue the deadline to object to the debtor's claim of exemptions, the discharge of a debtor in a Chapter 7 or the dischargeability of a particular debt owed by the debtor in either Chapter 7 or Chapter 13. Extensions of these deadlines must be requested by timely motion and require the entry of an order.

### Commentary

[Source: L.B.R. 203 and GPO 2006-3]

The purpose of L.B.R. 2003-1 is to assist in the appropriate administration of chapter 7 and chapter 13 cases. It is imperative for the court's docket sheet to clearly reflect all continued meetings of creditors and the date to which the meeting is continued.



**LOCAL BANKRUPTCY RULE 2004-1.  
EXAMINATIONS**

**(a) Ex Parte Application:** An order for examination pursuant to FED. R. BANKR. P. 2004 may be issued by the court on the ex parte application of a party in interest. The moving party must file an appropriate motion together with a proposed order. Such proposed order may not contain provisions in substitution of a subpoena or subpoena duces tecum available pursuant to FED. R. CIV. P. 45.

**(b) Time:** Unless otherwise ordered by the court for good cause shown, the date for the examination or production of documents sought under FED. R. BANKR. P. 2004(a) must be not less than fourteen (14) days after service, by the movant, of the examination order on the party to whom it is directed.

[Amended January 16, 2013, effective February 1, 2013.]

**Commentary**

[Source: L.B.R. 204]

Large document production requests on a fourteen (14) day notice of examination are not favored. It is good practice for the parties to discuss the dates, times and locations of the requested exam prior to submitting a request to the court, and to indicate any agreement or lack of agreement in the motion.

**LOCAL BANKRUPTCY RULE 2012-1.  
NOTICE OF SUBSTITUTION OF TRUSTEE AND NOTICE OF  
SUCCESSOR TRUSTEE'S ACCOUNTING**

**(a) Chapter 11 Trustee:** Promptly after a trustee or successor trustee is appointed in a chapter 11 case, the trustee must file and serve notice of such appointment on all creditors and parties in interest, and to such other parties as the court may direct, in each pending action, proceeding or matter.

**(b) Accounting:** When a successor trustee files with the court an accounting of a prior administration of the estate pursuant to FED. R. BANKR. P. 2012(b), such accounting must reflect the collection or disbursement of receipts by the prior trustee. The successor trustee must send notice of the filing of the accounting to all creditors and parties in interest in the case, including the prior trustee, unless the court otherwise orders for good cause shown.

**Commentary**

[Source: L.B.R. 212]

**LOCAL BANKRUPTCY RULE 2014-1.  
APPOINTMENT OF PROFESSIONAL PERSONS**

**(a) Ex Parte Application:** Subject to the limitations of FED. R. BANKR. P. 6003, applications for appointment of professional persons pursuant to FED. R. BANKR. P. 2014 and 11 U.S.C. § 327 may be granted nunc pro tunc to a date prior to the date of the order authorizing the engagement.

**(b) Applications Requiring Notice:** The court may require the applicant to mail notice of the application pursuant to L.B.R. 9013-1, or as otherwise directed by the court, particularly when any of the following events or conditions are present:

(1) The professional receives or proposes to receive payment of a retainer in connection with a bankruptcy case and approval of the retainer is sought in the same application seeking appointment of the professional. In such cases, the application and notice must state:

- (A) the amount of any retainer received or proposed;
- (B) the source of the payment or retainer; and

(C) whether the professional's fees are paid by a principal, insider, or affiliate of the debtor.

(2) The professional files an application for retention which identifies a potential conflict may exist. In such cases, the application and notice must state sufficient facts for third parties to determine whether a conflict of interest exists, including whether the professional represented the debtor pre-petition.

(3) The professional's retainer or other fees have been, or will be, paid by a third-party payor.

(4) The professional represents multiple debtors in related or jointly-administered cases.

(5) The professional proposes to be paid under non-traditional compensation arrangements (e.g. flat fee agreement or contingency fee agreement).

(6) The professional asserts a lien on the debtor's property.

**(c) Verified Statement:** A verified statement pursuant to FED. R. BANKR. P. 2014 is required. When notice of the application is required, a copy of the verified statement filed pursuant to FED. R. BANKR. P. 2014 must be attached to the notice.

#### Commentary

[Source: L.B.R. 214]

### LOCAL BANKRUPTCY RULE 2015-1. REPORTS

Any report of operations that the court or the United States Trustee may require the trustee or the debtor-in-possession to file in a case under any chapter of the Bankruptcy Code must be filed with the court within the time frames established by FED. R. BANKR. P. 2015 or the United States Trustee. Copies of such reports must be provided to the trustee, United States Trustee, and any committee pursuant to L.B.R. 2081-2(b).

#### Commentary

[Source: L.B.R. 215(a)]

See 11 U.S.C. §§ 704(a)(8) or 1106(a)(7).

See also the United States Trustee's Operating Guidelines and Reporting Requirements for that office's filing requirements at [www.usdoj.gov](http://www.usdoj.gov). This L.B.R. does not relieve the trustee or debtor-in-possession from the obligation to act in accordance with those guidelines.

See also L.B.R. 3022-1 for more information on the filing of a final report and motion for final decree in chapter 11 cases.

### LOCAL BANKRUPTCY RULE 2016-1. COMPENSATION OF PROFESSIONALS

**(a) Form of Fee Application:** Except for those applying for fees pursuant to L.B.R. 2016-3, every fee application filed pursuant to 11 U.S.C. §§ 330 or 331 must include a cover sheet in substantial conformity with L.B. Form 2016-1.1 and contain the following information:

(1) *Introduction:* The introductory statement must contain a general statement of the status of the case and include the information required on L.B. Form 2016-1.1.

(2) *Narrative by Category:* The professional fee application must contain a narrative that describes the work performed divided into categories of major/significant services. Within each category, the narrative must describe:

(A) the nature of the services,

(B) the result obtained,

(C) the benefit to the estate,

(D) a general description of what additional work remains to be done with respect to the matter,

(E) a statement of the number of hours spent on the particular matter and by whom, and

(F) the portion of the total fee applicable to the particular category.

(3) *Time Entries:*

(A) *Generally:* The narrative description must refer to a separate exhibit containing copies of detailed time entries from records contemporaneously kept by the applicant which support the fee sought with respect to each particular matter or category, including the date the work was performed, the individual performing the work, the time spent on each task (expressed in tenths of hours), the total fee for each task, and a detailed description of the work performed.

(B) *Jointly-Administered Cases:* In jointly-administered cases, the narrative must also provide a description of the overall work done in each case, as applicable, and provide the court with an approximate percentage of the time spent on each case.

(4) *Record of Expenses:* The applicant should retain cost/expense invoices or documentation for amounts over \$25 for possible review by the court.

**Commentary**

[Source: L.B.R. 216]

**LOCAL BANKRUPTCY RULE 2016-2.  
INTERIM COMPENSATION  
PROCEDURES IN CHAPTER 11 CASES**

(a) **Motions for Interim Compensation Procedures:** A motion seeking approval of interim compensation procedures in a chapter 11 case must include the following:

(1) a statement of the cause necessitating interim compensation procedures;

(2) verification that the debtor's cash flow allows it to pay its professionals and other potential administrative priority claimants on a monthly or other specified interim basis;

(3) a projection of monthly fees and expenses by the professional(s) seeking interim compensation; and

(4) any additional information necessary and appropriate to support the allowance of interim compensation.

(b) **Interim Compensation Procedures:** The court may approve interim compensation procedures in appropriate cases and utilize the established guidelines for professionals seeking approval of interim compensation or other procedures directed by the court. The guidelines are located at L.B.R. 2016-2App.

**Commentary**

[Source: New]

**LOCAL BANKRUPTCY RULE 2016-3.  
COMPENSATION OF CHAPTER 13 DEBTOR'S COUNSEL**

(a) **Short Form Fee Application:**

(1) *Eligibility:* In order to be eligible to use the Short Form Fee Application (the "SFFA") procedure, the applicant must:

(A) request a fee that is at or below the presumptively reasonable fee (the "PRF") amount provided in the General Procedure Order published by the Clerk, In the Matter of Procedures for Fee Applications in Chapter 13 Cases, as amended from time to time (the "Chapter 13 Fee GPO"), and



(B) provide the basic services listed in the Chapter 13 Fee GPO (the “Basic Services”), as necessary and appropriate.

(2) *Presumptively Reasonable Fee*: The chapter 13 trustee may recommend or the court may determine, in appropriate cases, that a lower fee be allowed. In converted cases, the chapter 13 trustee and the court will take into consideration the compensation already received.

(3) *Basic Services*: The applicant must submit an affirmative declaration, in conjunction with the filing of the SFFA, that:

(A) the applicant is not excluding any of the Basic Services; and

(B) the applicant has provided a copy of the Basic Services list to the debtor with the engagement letter or fee agreement.

(4) *Form of Application*: Applications for allowance of fees and reimbursement of expenses pursuant to the SFFA procedure must be made using L.B. Form 2016-3.1. Applicant need not supplement L.B. Form 2016-3.1, except upon formal objection, written request of the chapter 13 trustee, or order by the court.

(5) *Service, Notice and Objections*: Debtor’s counsel must serve a copy of the SFFA, L.B. Form 2016-3.1, along with a notice in substantial conformity with L.B. Form 2016-3.3, on the chapter 13 trustee, debtor and those parties requesting notice. Parties will have twenty-one (21) days from the mailing of the notice within which to file an objection.

**(b) Long Form Fee Application**: If the applicant requests allowance of a fee in excess of the PRF amount (not including expenses) or any of the Basic Services are excluded, the attorney cannot use the SFFA procedure and must use the Long Form Fee Application (the “LFFA”) procedure.

(1) *Form of Applications*: Applications for allowance of fees and reimbursement of expenses pursuant to the LFFA procedure must be made using L.B. Form 2016-3.2, and must be supplemented by the attachments outlined in L.B. Form 2016-3.2.

(2) *Service, Notice and Objections*: Debtor’s counsel must serve a copy of the LFFA, L.B. Form 2016-3.2, along with a notice in substantial conformity with L.B. Form 2016-3.3, on the chapter 13 trustee, the debtor and those parties requesting notice. The notice, without the LFFA form, must be served on all other creditors, claimants and parties in interest. Parties will have twenty-one (21) days from the mailing of the notice within which to file an objection.

**(c) Timing**: Fee applications under both the SFFA and LFFA must be filed no sooner than the date of entry of the order confirming the chapter 13 plan and no later than twenty eight (28) days after the date of entry of the order confirming the chapter 13 plan.

**(d) Order**: The attorney must submit a form of order in substantial conformity with L.B. Form 2016-3.4, listing the specific amount of fees and expenses requested, the amount received outside of the plan or previously paid, and the amount payable from plan payments.

**(e) Hearing**: If no objection is filed, the court may allow the requested fee in full or in part, upon the filing of a Certificate of Noncontested Matter in substantial conformity with L.B. Form 9013-1.3, or may order further supplementation or set the application for hearing. Any order or notice setting a hearing on an unopposed application may identify the court’s concerns or questions regarding inadequacies or deficiencies in the application which may result in reduction or disallowance of the requested fees or expenses. If an objection is filed, the applicant is responsible for filing a Certificate of Contested Matter and Request for Hearing in substantial conformity with L.B. Form 9013-1.4. Upon the filing of the Certificate of Contested Matter, the court may set the matter for hearing.

### Commentary

[Source - GPO 2007-2, as amended and, as may be amended from time to time by subsequent Chapter 13 Fee GPO]

When requesting fees using the SFFA procedure, attorneys are not required to submit their engagement letter or other fee agreement, detailed time slips, or a narrative unless requested by the trustee or otherwise ordered by the court. However, attorneys are advised

that if their fees are questioned, it may be quite difficult to prevail without the assistance of some or all of those items.

It is expected that the engagement will last through the earlier of consummation of the plan, entry of discharge, or the conversion or dismissal of the case. The SFFA procedure is for requesting fees and is not intended to limit the scope of chapter 13 engagements. The SFFA process does not and should not limit the ability of debtor's attorneys to provide services post-confirmation. The court will entertain further fee applications, supported by time records, for post-confirmation work.

#### **LOCAL BANKRUPTCY RULE 2016-4. COMPENSATION OF PETITION PREPARERS**

**Disclosure of Compensation of Petition Preparer:** Every person or entity who prepares a petition and/or related papers for filing a case for the debtor, but does not represent the debtor as an attorney of record, must file with the petition and concurrently transmit to the United States Trustee and trustee assigned to the case, a disclosure of compensation in substantial conformity with the Disclosure of Compensation of Bankruptcy Petition Preparer, Director's Procedural Form 280.

#### **Commentary**

[Source: L.B.R. 216]

#### **LOCAL BANKRUPTCY RULE 2018-1. INTERVENTION BY UNITED STATES OR A STATE ON CONSTITUTIONAL QUESTION**

**(a) Acts of Congress:** If, in any case or proceeding in which neither the United States nor any agency, officer, or employee thereof (other than the United States Trustee) is a party, a party raises a question concerning the constitutionality of any act of Congress affecting the public interest, such party must notify the judge by filing a motion with the court, with a copy to the United States Trustee and the United States Attorney, of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and/or proceeding.

**(b) State Statutes:** If, in any proceeding in which neither a state nor any agency, officer, or employee thereof is a party, a party raises a question concerning the constitutionality of a statute of such state affecting the public interest, such party must notify the judge by filing a motion with the court, with a copy to the United States Trustee and the state Attorney General, of the existence of the question, identifying the statute in question, the grounds upon which it is claimed to be unconstitutional, and the title of the case and/or proceeding.

**(c) Applicability:** This rule applies to all matters brought before the court, including those governed by FED. R. BANKR. P. 7001 et seq. and 9014. In an adversary proceeding, the question of constitutionality must be raised by motion and notice given to appropriate parties no later than the deadline for completion of discovery.

#### **Commentary**

[Source: L.B.R. 218]

See 28 U.S.C. § 2403(a) and (b).

This rule applies to both the main bankruptcy case and adversary proceedings.

#### **LOCAL BANKRUPTCY RULE 2081-1. CHAPTER 11-INITIAL MOTIONS**

**(a) Initial Motions:** During the first twenty-one (21) days following entry of the Order for Relief, the debtor may obtain expedited consideration for entry of orders by filing a



Motion Seeking Expedited Entry of Order(s) and Notice of Impending Hearing Thereon (the "Motion") as follows:

(1) *Motion*: The Motion must contain sufficient factual recitations regarding the nature of the debtor's business and the need for the types of relief sought. The Motion need not be accompanied by briefs or authorities. The movant must certify that the relief sought by the Motion is needed by the debtor on an expedited basis. If the Motion requests more than one (1) order, the motion must separately identify and discuss each requested relief or intended action.

(2) *Cover sheet*: The Motion must be accompanied by a cover sheet in substantial conformity with L.B. Form 2081-1.1.

(3) *Affidavits*: The Motion must be accompanied by one or more factual affidavits by a representative of the movant or executed by an individual having personal knowledge of the facts therein supporting the requested relief.

(4) *Notice*: The Motion must be accompanied by a notice in substantial conformity with L.B. Form 2081-1.2 and a copy of a response form in substantial conformity with L.B. Form 2081-1.3.

(5) *Proposed Order*: The Movant must file a proposed order for each type of requested relief. The proposed order must clearly state the relief requested, but should not contain proposed findings of fact or conclusions of law.

**(b) Service of the Motion:**

(1) *Service on the United States Trustee*: A copy of the Motion, cover sheet, affidavits, notice, and proposed orders must be hand-delivered or e-mailed to the United States Trustee, either before or within four (4) hours after the Motion is filed.

(2) *Service on other parties*: A copy of the Motion, cover sheet, affidavits, notice, and proposed orders must be served by hand-delivery, over-night mail, facsimile or e-mail initiated on the day the Motion is filed, to:

(A) any appointed chapter 11 trustee or examiner,

(B) any creditors' or equity security holders' committee pursuant to L.B.R. 2081-2,

(C) if there is no committee, the 20 largest unsecured creditors,

(D) any indenture trustee,

(E) the IRS and other relevant government entities,

(F) all parties who have requested notice,

(G) any party whose interest in property of the estate will be directly affected by any order requested; and

(H) the United States Trustee.

**(c) Hearing:**

(1) *Scheduling the Hearing*: The chambers of the judge assigned to the case will provide movant's counsel with a hearing date to be held that is, if possible, not more than three (3) court days after the date of the filing of the Motion. For purposes of this hearing only, if the judge's calendar cannot be arranged to accommodate a hearing within three court days, the judge's staff will notify the Clerk of the court who may refer the matter to any other available judge.

(2) *Service of Notice of Hearing*: As soon as the movant is notified of the hearing date, the movant must serve notice of the date and time of the hearing in substantial conformity with L.B. Form 2081-1.4 to:

(A) parties who were served with copies of the Motion; and

(B) those parties who have responded to the Motion on L.B. Form 2081-1.3.

The movant must notify each of the above of the date, time and place of the hearing by e-mail or facsimile, as requested in such party's response, within the later of: (i) four (4) hours after movant receives responder's request for notice, or (ii) four (4) hours of being notified by the court of the date and time of the hearing.

(3) *Proof of Service*: The debtor must file an affidavit of compliance with the service requirements of this L.B.R. prior to the commencement of any hearing pursuant to this L.B.R.

(4) *Objections*: Parties may file an objection in writing prior to the hearing and/or may appear at the hearing to state or supplement their objection orally.



(5) *Procedure at Hearing:* At any hearing set pursuant to this L.B.R., the parties will proceed in accordance with the Federal Rules of Bankruptcy Procedure and the Federal Rules of Evidence. The movant must be prepared to present evidence in support of its Motion. Any unopposed request may be granted in the court's discretion on the basis of affidavits, arguments, or representations of the parties or counsel, as appropriate.

(d) **Orders:** At the conclusion of any hearing held pursuant to this L.B.R., the court will make such findings of fact only as are supported by the record and will:

- (1) enter or deny any or all of the orders requested,
- (2) enter any or all of the orders requested on an interim basis pending such additional notice as the FED. R. BANKR. P. or the court may direct, and/or
- (3) continue the hearing with respect to any or all of the orders requested.

Only interim orders will be entered pursuant to this L.B.R. respecting cash collateral or post-petition financing.

(e) **Other Expedited Relief:** The availability of expedited consideration of motions under this L.B.R. will not preclude ex parte relief or other emergency relief where appropriate upon specific request.

[Amended January 16, 2013, effective February 1, 2013.]

### Commentary

[Source: GPO 2002-6]

See L.B. Forms 2081-1.1 through 2081-1.4.

## LOCAL BANKRUPTCY RULE 2081-2. CHAPTER 11-CERTAIN NOTICES

(a) **Notice to Twenty Largest Unsecured Creditors:** If notice to the twenty (20) largest unsecured creditors is required, and there are less than 20 unsecured creditors of the estate, the certificate of service must indicate that all unsecured creditors were noticed.

(b) **Notice on Committees:** If notice to a creditors' or equity security holders' committee is required, notice must be made on the committee's counsel. If the committee has no counsel of record, notice must be made upon all members of the committee.

(c) **Limited Notice List:** A chapter 11 debtor may file a motion to establish a limited notice list for matters where notice is not otherwise governed by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure or these Local Rules.

(1) *Motion:* A motion seeking a limited notice list must include the following:

- (A) a statement of the cause necessitating a limited notice list;
- (B) the types of pleadings the limited notice list will apply to (i.e. limited notice on one pleading or throughout the remainder of the case); and
- (C) the names of the creditors and parties the debtor seeks to place on the limited notice list.

(2) *Minimum Requirement:* Unless otherwise ordered, a limited notice list must include the following:

- (1) the United States Trustee,
- (2) any appointed chapter 11 trustee or examiner,
- (3) any appointed creditors' or equity security holders' committee,
- (4) if there is no committee, the 20 largest unsecured creditors,
- (5) all secured creditors (Schedule D),
- (6) all priority creditors (Schedule E),
- (7) those parties who have filed an entry of appearance and request for all notices,
- (8) parties against whom relief is sought by the particular intended action,
- (9) the debtor's attorneys, and
- (10) any additional parties as directed by the court.

[Amended January 16, 2013, effective February 1, 2013.]

## Commentary

[Source: New.]

This rule does not eliminate the need for notice pursuant to the code and the rules. Use of the Limited Notice List is not effective until an order is entered by the court. See L.B.R. 1015-1 regarding comprehensive service lists and motions in jointly-administered cases.

Motions applying to less than all of the jointly-administered cases are to be filed in the lead case.

**LOCAL BANKRUPTCY RULE 2081-3.  
CHAPTER 11 - MOTIONS TO DISMISS OR CONVERT**

**(a) Applicability:** This rule applies to motions to dismiss or convert a chapter 11 case pursuant to 11 U.S.C. § 1112.

**(b) Selecting a Hearing Date:** Each division of the court maintains a chapter 11 dismissal motion calendar. Information as to the time and dates of each division's calendar may be obtained from the court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov) or the assigned judge's staff. All dismissal motions must be set for hearing on the calendar of the division to which the case is assigned.

(1) *Notice Period:* Pursuant to FED. R. BANKR. P. 9006(c), the court finds cause exists to shorten the time to object to fourteen (14) days.

(2) *Hearing Date:* A party filing a dismissal motion in a pending chapter 11 case must select from the calendar of available hearing dates a proposed hearing date, which must be the latest hearing date available on the assigned judge's calendar which is not more than thirty (30) days from the date the dismissal motion is filed with the court. In the event the movant sets a hearing date beyond thirty (30) days, the movant is deemed to have waived its right under 11 U.S.C. § 1112(b)(3) to a hearing within thirty (30) days and a decision within fifteen (15) days of the commencement of the hearing.

(3) *Notice of Hearing:* Subject to the time limitations set forth in subsections (1) and (2) above, the movant must comply with the provisions of L.B.R. 9013-1. The notice of hearing must specify the following:

(A) the hearing date, time and location;

(B) that an objection and request for hearing must be filed by a date certain that is at least fourteen (14) days after notice of the motion; and

(C) that, if no objection is timely filed, the requested relief in the motion may enter without a hearing, upon the filing of a certificate of non-contested matter.

(4) *Notice:* The notice and motion must be served on the debtor, the debtor's counsel, the United States Trustee, any case trustee and those requesting notice. The notice must also be mailed to all creditors and parties in interest.

**(c) Procedures for Preliminary Hearings:** The following procedures apply at preliminary hearings on motions to dismiss:

(1) No testimony will be taken. Evidence will only be accepted by way of an oral offer of proof and exhibits. Such offers must provide sufficient detail to enable the court to make specific findings based thereon and must include the identity of the witnesses available to testify at an evidentiary hearing and an explanation of their expected testimony. Written summaries of witnesses' testimony are not required but may be submitted.

(2) Parties must exchange all exhibits they intend to use, or may reasonably anticipate using, 24 hours prior to the preliminary hearing. The exhibits must be tendered to the court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.

(3) Objections to tendered evidence should be made at the conclusion of each party's declaration. Any objection must identify the evidence objected to and specify the grounds for the objection.



(4) The court will treat the hearing as a preliminary hearing and, based on the proffers of evidence, if the movant establishes sufficient cause, may set the matter over for a final hearing. In the alternative, the court may consider the offers of proof and, absent the need for an evidentiary hearing, grant or deny the request for dismissal.

(5) *Expert Witnesses*: Any party anticipating the use of an expert witness for a final hearing will, at the preliminary hearing, comply with FED. R. BANKR. P. 7026(a)(2).

(d) **Telephonic Hearings**: Parties, through counsel, are required to attend the hearing in person except on prior request and approval of a telephonic appearance by the judge to whom the case is assigned. Telephonic appearances must be requested by filing a motion. If a telephonic appearance is permitted, the parties must exchange witness lists and exhibits and file them with the court no later than 24 hours prior to the hearing.

(e) **Waiver of 30 Day Hearing**: In the event that the movant does not select a hearing date pursuant to sub-section (b), movant must follow the motion practice procedures set forth in L.B.R. 9013-1, and comply with the notice period as directed by FED. R. BANKR. P. 2002(a)(4). Using the L.B.R. 9013-1 procedures constitutes a waiver by the movant of the hearing and ruling time requirements of 11 U.S.C. § 1112(b)(3).

### Commentary

[Source: GPO 2007-1]

See L.B.R. 1017-1, 2, and 3 for other local rules on conversion and dismissal.

See also L.B.R. 9070-1 for information on witnesses and exhibits.

The L.B. Form 9013-1.3 Certificate of Non-Contested Matter and Request for Entry of Order should be used when no objection is timely filed as referenced in subparagraph 3(b)(3)(C) above.

Selecting a hearing date is intended to make it possible for the parties and the court to comply with the notice requirements of FED. R. BANKR. P. 2002(a)(4) and the hearing requirements of 11 U.S.C. § 1112(b)(3). In order to best comply with the Bankruptcy Code, the court has found cause to shorten the notice period for self-calendared motions pursuant to FED. R. BANKR. P. 9006(c).

## LOCAL BANKRUPTCY RULE 2082-1. CHAPTER 12 - GENERAL

### (a) Motion to Confirm and Order Confirming Chapter 12 Plan:

(1) *Motion to Confirm*: The debtor must file with the plan a motion to confirm in substantial conformity with L. B. Form 2082-1.1. This motion must be verified by the debtor and served on the chapter 12 trustee and all creditors and parties in interest. The motion must contain facts sufficient to enable the court to make appropriate findings in accordance with the requirements of chapter 12.

(2) *Order of Confirmation*: The proposed order of confirmation must be in substantial conformity with L.B. Form 2082-1.2, and must be prepared by the debtor and filed with the plan. Notice of entry thereof shall be mailed promptly by the clerk, or some other entity as the court may direct, to the debtor, chapter 12 trustee, all creditors, equity security holders, and other parties in interest.

### (b) Notice and Hearing on Motion to Confirm Chapter 12 Plan:

(1) *Contested Matter*: Hearings on motions to confirm Chapter 12 plans are contested matters subject to FED. R. BANKR. P. 9014 and the service requirements of FED. R. BANKR. P. 7004.

#### (2) Notice:

(A) *Form and Service*: The debtor must prepare a notice in substantial conformity with L.B. Form 2082-1.3, and must serve a copy of the notice, the motion to confirm, and the plan on the chapter 12 trustee and all creditors and parties in interest.

(B) *Contents*: The notice must contain the date for the confirmation hearing and the date for filing objections to the plan. At the time the plan is filed the



debtor must obtain from the court the date for the hearing on confirmation of the plan. Unless the court fixes a shorter period, notice of the hearing must be given not less than twenty-one (21) days prior to the hearing.

(C) *Certificate of Service*: The debtor must file a copy of the notice with the court within three (3) court days after service thereof, and must file with it a certificate of service showing compliance with this L.B.R.

(3) *Objections*: Objections to confirmation of the plan must be filed with the court and served on the debtor, the chapter 12 trustee, and on any other entity designated by the court, at least three (3) court days prior to the hearing or within such other time as may be fixed by the court. Objections must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered.

(4) *Hearing*:

(A) If no objection to confirmation is timely filed, the court, at the hearing on confirmation, may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on those issues. The court may enter an order confirming the plan, if it otherwise meets the requirements of 11 U.S.C. 1222 and 1225, based on such evidence and/or representations as are sufficient to the court.

(B) If objections to confirmation are filed, the court will use the hearing on confirmation as a preliminary hearing and status conference for the purposes of

- (i) framing the issues to be heard at the final hearing on confirmation,
- (ii) the entry of orders pertaining to discovery,
- (iii) the setting of the final hearing on the confirmation of the plan, and
- (iv) the entry of such other orders pertaining to the debtor's motion to confirm as are appropriate.

(C) No evidence will be taken and no witnesses need appear at the first hearing on confirmation.

(D) In accordance with 11 U.S.C. § 1224, except for cause, the hearing must be concluded not later than forty-five (45) days after the filing of the plan.

**(c) Amending a Chapter 12 Plan Prior to Confirmation:** In the event the debtor amends the original chapter 12 plan prior to confirmation, the amended plan, and such notice as the court may order, must be served upon the chapter 12 trustee and all creditors and parties in interest, or as otherwise ordered by the court. If the plan is amended after the filing of a motion to confirm, a new motion to confirm, verified by the debtor and conforming to the amended plan, must be filed. A motion to confirm an amended plan acts as a notice of withdrawal of, or a motion to withdraw, any previously filed motion to confirm and must be subject to FED. R. BANKR. P. 7041.

**(d) Modification of Chapter 12 Plan After Confirmation:** In the event the debtor, the trustee, or the holder of an allowed unsecured claim desires to modify a confirmed chapter 12 plan, the movant must file the proposed modified plan together with a motion requesting modification which must state with particularity the date the plan was originally confirmed, the reason for the modification and the effect upon distribution to each creditor class should the modification be approved. If the modification is proposed after the expiration of the period for the filing of claims, service may be limited to the trustee, any party expressly affected by the modification and upon those creditors who have filed proofs of claims.

#### Commentary

[Source: L.B.R. 320, L.B.R. 319]

### LOCAL BANKRUPTCY RULE 2083-1.

#### CHAPTER 13 - GENERAL

#### (Preconfirmation Adequate Protection Payments on Personal Property)

**(a) Preconfirmation Payments Pursuant to 11 U.S.C. § 1326(a)(1):** Unless otherwise ordered by the court, all preconfirmation adequate protection payments made by the debtor

pursuant to 11 U.S.C. § 1326(a)(1) must be paid to the chapter 13 trustee, not the secured claimant. The preconfirmation plan payments to the trustee must include the amount required under 11 U.S.C. § 1326(a)(1), plus the necessary trustee's fee.

**(b) Calculation of Adequate Protection:** For the purpose of this rule, calculation of adequate protection is calculated as one percent (1%) of the outstanding principal balance due as of the date of the filing of the petition, unless otherwise ordered by the court.

**(c) Creditor's Rights:** Payment of preconfirmation adequate protection is without prejudice to the secured creditor's right to object to confirmation of the debtor's plan or to seek determination as to the value of the claim or the amount needed to provide adequate protection.

**(d) Preconfirmation Disbursements:** Preconfirmation disbursements by the chapter 13 trustee under 11 U.S.C. § 1326(a)(1) are hereby authorized without further order, but such disbursements must not be made unless such creditor has filed a proof of claim with the court. Preconfirmation disbursements under 11 U.S.C. § 1326(a)(1) must commence within 30 days of filing the proof of claim, unless the trustee has not received sufficient or good funds to make such payment. The trustee is authorized to deduct all 11 U.S.C. § 1326(a)(1) preconfirmation disbursements from an allowed claim and to retain the amount necessary to pay the trustee's statutory fee based upon the preconfirmation payments distributed by the trustee.

**Commentary**

[Source: T.L.B.R. 2083-1.]

See L.B.R. 3015-1 and L.B. Form 3015-1 for information on filing a chapter 13 plan.

**LOCAL BANKRUPTCY RULE 3001-1.  
CLAIMS AND EQUITY SECURITY INTERESTS - GENERAL**

See FED. R. BANKR. P. 3001(e)(2) and Director's Procedural Forms 210A and 210B regarding the transfer of a claim other than for security after the proof of claim has been filed.

**Commentary**

[Source: New.]

**LOCAL BANKRUPTCY RULE 3003-1.  
FILING PROOF OF CLAIM IN CHAPTER 11 CASE**

Subject to 11 U.S.C. § 726(a)(1), upon motion for an order establishing procedures and a bar date for the filing of proofs of claim in chapter 11 cases or for a bar date for filing motions for allowance of chapter 11 administrative expense claims, the court may issue an order and require notice in substantial conformity with L.B. Forms 3003-1.1 through 3003-1.4, respectively.

**Commentary**

[Source: New.]

**LOCAL BANKRUPTCY RULE 3004-1.  
FILING OF PROOF OF CLAIM BY DEBTOR OR TRUSTEE**

A debtor or trustee filing a proof of claim on behalf of a creditor pursuant to 11 U.S.C. § 501(c) and FED. R. BANKR. P. 3004 must file and serve a notice of the filing upon the creditor on whose behalf the claim is filed. The notice must be in substantial conformity with L.B. Form 3004.1.1, and be sent to the creditor, its counsel of record, if any, the

debtor and case trustee. The party filing the proof of claim must attach a copy of the proof of claim with the notice.

#### Commentary

[Source: L.B.R. 304]

### **LOCAL BANKRUPTCY RULE 3005-1. FILING OF PROOF OF CLAIM BY GUARANTOR, SURETY, INDORSER OR OTHER CO-DEBTOR**

When an entity or its attorney files a proof of claim on behalf of a creditor pursuant to 11 U.S.C. § 501(b) and FED. R. BANKR. P. 3005, the person filing the claim must comply with the procedure set forth in L.B.R. 3004-1. In addition to the parties required to be served in L.B. R. 3004-1, the notice must also be provided to any other obligors.

#### Commentary

[Source: L.B.R. 305]

### **LOCAL BANKRUPTCY RULE 3007-1. OBJECTIONS TO CLAIMS**

**(a) Procedure for Objections:** Any party objecting to the allowance of any claim must file an objection stating with particularity the allegations of fact and grounds for the objection. The objection must comply with and be prosecuted in the manner prescribed in FED. R. BANKR. P. 3007 and L.B.R. 9013-1.

**(b) Trustee's Objections to Claims in Chapter 13 Cases:**

(1) As soon as practicable after the expiration of the last day for filing of claims in each case, the chapter 13 trustee must submit a report of claims to the debtor and debtor's attorney. The chapter 13 trustee must file a certificate of compliance with this L.B.R.

(2) Within fourteen (14) days from the date of the chapter 13 trustee's report of claims is submitted, the debtor must file with the chapter 13 trustee a written response to the report, setting forth any grounds for objections to claims. The debtor's failure to make and file the response constitutes a waiver of all objections thereto, provided, however, that for good cause shown, the court may relieve the debtor from the effects of this L.B.R. to prevent manifest injustice.

(3) If the debtor's response to the chapter 13 trustee's report of claims includes objections to the allowance, amount, or classification of any of the claims filed, the chapter 13 trustee or the debtor may file an objection to such claims and give notice thereof as specified in subsection (a), above;

(4) In addition to the foregoing procedures, it is the chapter 13 trustee's and debtor's attorney's duty to examine all proofs of claims and, if appropriate, to file objections in the manner specified in subsection (a), above.

#### Commentary

[Source: L.B.R. 307]

### **LOCAL BANKRUPTCY RULE 3012-1. VALUATION OF COLLATERAL AND DETERMINATION OF SECURED STATUS PURSUANT TO 11 U.S.C. § 506**

**(a) Real Property:**

(1) *How Raised:* A debtor's request for the valuation of real property and determi-



nation of secured status under 11 U.S.C. § 506 must be made by separate motion and referenced within the proposed plan. A separate adversary proceeding is not required.

(2) *Required Information:* The motion must include the name of the creditor, a description of the collateral, amount of debt owed to the creditor, and the debtor's contention of value of the collateral. The motion must also include the amounts owed to other senior lienholders. The description of collateral must include a legal description of the affected real property and any identifying information with respect to the affected mortgage lien, including the date of the deed of trust, recording date, county, book and page or reception number of the recording.

(3) *Service:* The debtor must serve creditors affected by the debtor's valuation of collateral in the manner specified in FED. R. BANKR. P. 9014 and 7004.

(4) *Notice:* Notice of the motion is governed by L.B.R. 9013-1.

(5) *Objections:* Objections to the motion must recite the basis of the objection, including the amount and basis of the alternative value proposed by the objector. In the absence of a written objection, the valuation asserted by the debtor will be accepted by the court and shall be used in the court's determination of the amounts to be distributed under the plan. Objections to the plan proposing treatment under 11 U.S.C. § 506 must be filed separately within the applicable deadlines.

(6) *No Objections:* If no objections are filed, the movant must file a Certificate of Noncontested Matter in substantial conformity with L.B. Form 9013-1.3.

(7) *Hearing:* Objections to the valuation of collateral under 11 U.S.C. § 506 will be considered in conjunction with the hearing on plan confirmation. If the objection requires an evidentiary hearing, the court will use the hearing on confirmation as a status and scheduling conference to set an evidentiary hearing date and related deadlines.

(8) *Order on Motion:* The attorney must submit a proposed order in substantial conformity with L.B. Form 3012-1.1.

(9) *Order Extinguishing Lien:* Upon successful completion of the debtor's plan, the debtor may request an order that the lien is extinguished. See L.B. Forms 3015-1.11 and 3015-1.12 (Chapter 13 Debtor's Certification to Obtain Discharge) and L.B. Form 3022-1.2 (Chapter 11 Individual Debtor Final Report and Motion for Final Decree).

#### **(b) Personal Property:**

(1) *How Raised:* A debtor's request for the valuation of personal property and determination of secured status under 11 U.S.C. § 506 may be made in the proposed plan. A separate motion or adversary proceeding is not required.

(2) *Required Information:*

(A) *Motor Vehicles:* Requests for valuation of a motor vehicle must include a description of the affected vehicle, including the year, make, model and vehicle identification number (VIN).

(B) *Other Personal Property:* Requests for valuation of other personal property must include a description of the affected property and any identifying information with respect to the underlying contract or transaction.

(3) *Service, Objections, Hearing, and Order:* Requirements regarding service, objections, hearing and order are governed by the confirmation requirements of the applicable chapter under which the case is pending.

#### **Commentary**

[Source: New]

See 11 U.S.C. § 506 and FED. R. BANKR. P. 3012.

Although the "lien-avoiding effect of the confirmed plan" is established at confirmation, actual lien avoidance is contingent upon the debtor completing the plan and receiving a discharge. If the case is dismissed or plan payments are not otherwise completed, liens avoided under § 506(d) are reinstated. 11 U.S.C. § 349(b)(1)(C).

**LOCAL BANKRUPTCY RULE 3015-1.  
FILING OF CHAPTER 13 PLAN**

**(a) Chapter 13 Confirmation Process - Forms:**

The court has developed the following Local Bankruptcy Forms in connection with this L.B.R. 3015-1.

(1) *L.B. Form 3015-1.1 - Chapter 13 Plan*: The Chapter 13 Plan form must be used when filing the original plan, as well as with any amendment to the plan.

(2) *L.B. Form 3015-1.2 - Notice of Filing of Chapter 13 Plan, Deadline for Filing Objections Thereto, and Hearing on Confirmation*: This notice may be used when the plan is filed after the petition date. In a case that is converted to chapter 13, this notice may be used when the plan is filed after the conversion date. This notice may also be used if creditors are added to the schedules after the petition date.

(3) *L.B. Form 3015-1.3 - Notice of Continued Dates for Meeting of Creditors and Hearing on Confirmation of Plan*: This notice may be used if the Meeting of Creditors is continued to a date after the Hearing on Confirmation.

(4) *L.B. Form 3015-1.4 - Verification of Confirmable Plan*: The Verification is to be filed when (a) there are no pending objections to the plan or amended plan, as applicable, (b) the debtor has complied with the verification requirements and (c) the debtor requests confirmation of the plan.

(5) *L.B. Form 3015-1.5 - Certificate and Motion to Determine Notice*: The Certificate and Motion to Determine Notice addresses objections, amendments, and notice of a chapter 13 plan and is to be filed by the debtor when objections or amendments to the plan are filed.

(6) *L.B. Form 3015-1.6 - Notice of Filing Amended Chapter 13 Plan Prior to Hearing on Confirmation and Deadline for Filing Objections Thereto*: To be used to provide notice of an amended chapter 13 plan that is filed and served prior to the original hearing on confirmation date.

(7) *L.B. Form 3015-1.7 - Notice of Filing Amended Chapter 13 Plan and Deadline for Filing Objections Thereto*: To be used when directed by the court to utilize notice procedures under FED. R. BANKR. P. 2002 and L.B.R. 2002-1 and 9013-1.

(8) *L.B. Form 3015-1.8 - Notice of Filing Amended Chapter 13 Plan, Deadline for Filing Objections Thereto, and Hearing on Confirmation*: To be used when directed by the court to utilize notice procedures under FED. R. BANKR. P. 2002 and L.B.R. 2002-1 and 9013-1 and the court provides the debtor with a new hearing on confirmation date.

(9) *L.B. Form 3015-1.9 - Chapter 13 Confirmation Order*: The court may use this form order or a virtual order to confirm the plan.

(10) *L.B. Form 3015-1.10 - Order Modifying Confirmed Chapter 13 Plan*: The court may use this form order to modify a confirmed plan.

(11) *L.B. Form 3015-1.11 - Chapter 13 Debtor's Certification to Obtain Discharge*: To be used after all of the plan payments are completed and the debtor seeks a chapter 13 discharge.

(12) *L.B. Form 3015-1.12 - Order on Chapter 13 Debtor's Certification to Obtain Discharge*: The court may use this form order in response to L.B. Form 3015-1.11.

**(b) Filing of the Chapter 13 Plan:**

(1) The chapter 13 plan must be filed in accordance with FED. R. BANK. P. 3015. The form of the plan must conform to L.B. Form 3015-1.1.

(2) The failure to timely file the plan will result in the dismissal of the case pursuant to L.B.R. 1007-1 and 1017-3 and the United States Trustee's Standing Motion to Dismiss Deficient Case, without further notice, certification or hearing.

(3) The chapter 13 confirmation process is a contested matter subject to FED. R. BANKR. P. 7004 and 9014. If the debtor is proposing to modify the rights of secured creditors, the debtor must specifically serve such creditors in the manner specified by the FED. R. BANKR. P.



**(c) Notice of the Chapter 13 Plan and Hearing on Confirmation:**

(1) When the plan is filed with the petition, or at the time of conversion to chapter 13, the court will mail a copy of the plan along with the Notice of Meeting of Creditors containing the date and time of the hearing on confirmation and the deadline to file objections to the plan. The court will mail the plan by means of first class mail to the Chapter 13 trustee, the United States Trustee and to the addresses for parties as listed on the Creditor Address Mailing Matrix filed in the case at the time of the mailing, subject to the redirection of mail by the Bankruptcy Noticing Center under 11 U.S.C. § 342. The above mailing by the court may not satisfy the service requirements of FED. R. BANKR. P. 9014 and 7004; if not, the debtor is responsible for satisfying any applicable service requirements under those rules.

(2) In addition to the requirements of FED. R. BANKR. P. 3015, when the plan is filed after the petition date, or after the date of conversion to chapter 13, the debtor must forthwith serve a copy of the plan along with a legally sufficient notice setting forth the date, time and location of the confirmation hearing and the deadline to file objections to the plan on all parties listed in paragraph (c)(1) above. The debtor may mail a copy of the Notice of Meeting of Creditors with the plan to comply with this notice requirement, or use L.B. Form 3015-1.2.

(3) No later than three (3) court days following the debtor's mailing of the plan or any amended plan, the debtor must file a certificate of service setting forth the name of the document(s) mailed and all parties to whom notice was provided. The certificate of service should be filed with the plan or any amended plan, but not later than three (3) court days following mailing of the plan or any amended plan.

(4) The debtor is responsible for providing legally sufficient service and notice of the plan, the deadline to file objections thereto, and the hearing on confirmation to any additional creditors added at any time during the case.

**(d) Continued Meeting of Creditors:**

(1) Consistent with L.B.R. 2003-1, a debtor's request for a continuance of the 11 U.S.C. § 341(a) meeting of creditors must be in writing and served on the chapter 13 trustee no less than seven (7) days prior to the date and time of the scheduled meeting. A request for a continuance of the meeting of creditors is not filed with the court.

(2) In the event that the meeting of creditors is continued to a date *prior to* the original hearing on confirmation date, the hearing on confirmation will remain as scheduled.

(3) In the event that the meeting of creditors is continued to a date *after* the original hearing on confirmation date, the debtor must file a motion to continue the hearing on confirmation or appear at the originally scheduled date for the hearing on confirmation and request new deadlines be set by the court.

(4) Within three (3) court days of the entry of an order granting a motion to continue the hearing on confirmation, the requesting party shall file and serve a Notice of Continued Dates for Meeting of Creditors and Hearing on Confirmation of Plan in substantial compliance with L.B. Form 3015-1.3 on all parties in interest, and file proof of such service with the court.

**(e) Filing Objections to Confirmation of Chapter 13 Plan:**

(1) No later than three (3) court days prior to the date first set for the meeting of creditors, objections to the plan must be filed with the court and served on the chapter 13 trustee, the debtor and debtor's counsel.

(2) Parties in interest may seek leave to file a late objection. A motion to file a late objection must include the proposed objection as an exhibit.

(3) Objections must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the court and the failure to plead with specificity may result in the court striking the objection.

(A) A creditor's objection as to the claim amount owed as provided in the plan must be accompanied by an attached payment history and categorical calculation (*e.g.*, fees, costs, principal, and interest) of the amount the creditor asserts is owed.



(B) Objections to the debtor's expenses or Current Monthly Income calculations must specify each expense item or calculation to which an objection is raised and the basis for the objection.

(C) Objections to the debtor's request for valuation of collateral and determination of secured status under 11 U.S.C. § 506 must comply with L.B.R. 3012-1, including the amount and basis of the alternative value proposed by the objector.

(4) Unless otherwise ordered, previously filed objections to confirmation are deemed moot and new objections must be timely filed addressing any amended plan *if*, after court approval, the amended plan is sent on notice with an opportunity to object. Objections to a debtor's motion for valuation of real property under 11 U.S.C. § 506 and L.B.R. 3012-1 will be deemed continued until the objection is withdrawn, resolved, granted or denied.

**(f) If No Plan Objections Are Filed:**

*(1) No Amendment to the Plan.*

(A) If no objections are filed, no amendments are necessary and the debtor has complied with the verification requirements, the debtor must file a Verification of Confirmable Plan no earlier than seven (7) days following the debtor's first attendance at the meeting of creditors but no later than four (4) court days prior to the original hearing on confirmation.

(B) The Verification of Confirmable Plan must be in substantial conformity with, and contain all of the information in, L.B. Form 3015-1.4.

(C) A copy of the Verification of Confirmable Plan must be served on the chapter 13 trustee and any parties requesting notice.

(D) Upon the filing of the Verification of Confirmable Plan the court may confirm the plan without requiring any parties to appear at the hearing on confirmation.

*(2) Amendments to the Plan Prior to Originally Scheduled Hearing on Confirmation When No Plan Objections Are Filed.*

(A) If no objections are filed, and an amendment to the plan is necessary, the debtor must file the amended plan, along with a Certificate and Motion to Determine Notice, no earlier than the day following the debtor's first attendance at the meeting of creditors and no later than four (4) court days prior to the hearing on confirmation.

(B) The Certificate and Motion to Determine Notice must be in substantial conformity with, and contain all of the applicable information in, L.B. Form 3015-1.5.

(C) The debtor must serve a copy of the amended plan and Certificate and Motion to Determine Notice to the chapter 13 trustee and those parties requesting notice.

(D) After the filing of a Certificate and Motion to Determine Notice, the court will order what notice, if any, is required and provide instructions regarding the setting of any further hearing either at the hearing on confirmation or by separate written order.

(E) If there are at least twenty-eight (28) days between the date of service and the scheduled hearing on confirmation, the debtor may file and serve an amended plan. Such plan is to be filed and served no earlier than the debtor's first attendance at the meeting of creditors and it will be considered at the originally scheduled hearing on confirmation. If the debtor so elects, the following shall apply:

(i) Debtor shall serve all creditors and parties in interest with the amended plan so filed and a notice which substantially conforms with L.B. Form 3015-1.6 and which sets an objection date that is twenty-one (21) days from the date of service of the amended plan and notice.

(ii) If the debtor complies with subsection (E)(i), the requirement of subsection L.B.R. 3015-1(f)(2) for filing a Certificate and Motion to Determine Notice as to the prior plan is waived.

(iii) If no objections are filed to the amended plan so served, the debtor shall file a Verification of Confirmable Plan no later than four (4) court days prior to the hearing. Upon the filing of the Verification of Confirmable Plan, the court may vacate the hearing on confirmation.

(iv) If objections are filed to an amended plan filed in accordance with this procedure, the debtor shall make reasonable efforts to complete the obligation to meet and confer and file a Certificate and Motion to Determine Notice to advise the court and objecting parties of the debtor's response to the objection(s) no later than four (4) court days prior to the hearing on confirmation. The originally scheduled hearing will proceed as set.

(v) If the debtor complies with the provisions of this subsection in prosecuting an amended plan, the time period for filing objections to the amended plan of Fed.R.Bankr.P. 2002(b), is shortened by this Local Bankruptcy Rule to twenty-one (21) days from mailing.

**(g) If Plan Objections Are Filed:**

**(1) *Obligation to Meet and Confer.***

(A) In an effort to resolve or narrow the issues in dispute, no later than seven (7) days prior to the hearing on confirmation, the debtor and any objecting party must Meet and Confer, as that term is defined in L.B.R. 9001.

(B) The failure to comply with the obligation to Meet and Confer may result in the court striking the objection, denying confirmation or taking further action as appropriate.

**(2) *No Amendment to the Plan.***

(A) If there are objections to the plan and the debtor is not filing an amended plan to resolve the objections, the debtor must file a Certificate and Motion to Determine Notice, no earlier than the day following the debtor's first attendance at the meeting of creditors and no later than four (4) court days prior to the hearing on confirmation.

(B) The Certificate and Motion to Determine Notice must be in substantial conformity with, and contain all of the applicable information in L.B. Form 3015-1.5.

(C) The debtor must serve a copy of the Certificate and Motion to Determine Notice to the chapter 13 trustee, any parties who objected to the most recently noticed plan, and those requesting notice.

(D) After the filing of a Certificate and Motion to Determine Notice, the court may order what notice, if any, is required and provide instructions regarding the setting of any further hearing either at the hearing on confirmation or by separate written order.

**(3) *Amendments to the Plan Prior to Originally Scheduled Hearing on Confirmation When Plan Objections Are Filed.***

(A) If there are objections to the plan and the debtor is filing an amended plan to resolve some or all of the objections, the debtor must file the amended plan, along with a Certificate and Motion to Determine Notice, no earlier than the day following the debtor's first attendance at the meeting of creditors and compliance with the obligation to meet and confer, but no later than four (4) court days prior to the hearing on confirmation.

(B) The Certificate and Motion to Determine Notice must be in substantial conformity with, and contain all of the applicable information in L.B. Form 3015-1.5.

(C) The debtor must serve a copy of the amended plan and Certificate and Motion to Determine Notice to the chapter 13 trustee, any parties who objected to the most recently noticed plan, and those requesting notice.

(D) After the filing of a Certificate and Motion to Determine Notice, the court may order what notice, if any, is required and provide instructions regarding the setting of any further hearing either at the hearing on confirmation or by separate written order.



(E) If there are at least twenty-eight (28) days between the date of service and the scheduled hearing on confirmation, the debtor may file and serve an amended plan. Provided the debtor otherwise complies with the provisions of L.B.R. 3015-1(f)(2)(E) above, such plan is to be filed and served no earlier than the debtor's first attendance at the meeting of creditors and compliance with the obligation to meet and confer, so it will be considered at the originally scheduled hearing on confirmation. The provisions of L.B.R. 3015-1(e)(4) apply to this subsection (E).

**(4) Plan Objections Resolved.**

(A) If there are no pending objections or objections have been formally withdrawn to the plan or amended plan, as applicable, the debtor has complied with the certification requirements, and the plan is otherwise ready for confirmation, the debtor must file the Verification of Confirmable Plan to obtain an order confirming the plan.

(B) The Verification of Confirmable Plan must be in substantial conformity with, and contain all of the information in, L.B. Form 3015-1.4.

(C) A copy of the Verification of Confirmable Plan must be served on the chapter 13 trustee, any parties who objected to the most recently noticed plan, and those requesting notice.

(D) Upon the filing of the Verification of Confirmable Plan the court may confirm the plan at the hearing on confirmation, or by separate court order without requiring any parties to appear at the hearing on confirmation.

**(h) Hearings:** The debtor and objecting parties must appear or be represented at any scheduled hearing on confirmation, unless otherwise ordered by the court.

**(i) Service of Amended Plan After the Scheduled Hearing on Confirmation:** The court will direct what procedures apply for amendments to a plan at or after the scheduled hearing on confirmation, including utilizing the procedures set forth in L.B.R. 2002-1 and 9013-1. The court may require the debtor to use L.B. Form 3015-1.8 to provide notice of an amended plan, the deadline for filing objections thereto, and the setting of a new hearing on confirmation. In the alternative, the court may require the debtor to use L.B. Form 3015-1.7 to provide notice of an amended plan and the deadline for filing objections thereto, without the further setting of a new hearing on confirmation.

**(j) Modification of Chapter 13 Plan After Confirmation:**

(1) *Proposed Modified Plan:* In the event the debtor, the trustee, or the holder of an allowed unsecured claim desires to modify a confirmed chapter 13 plan, the movant must file the proposed modified plan together with a motion requesting modification which must state with particularity the date the plan was originally confirmed, the reason for the modification and the effect upon distribution to each creditor class should the modification be approved. If the modification is proposed after the expiration of the period for the filing of claims, service may be limited to the trustee, any party whose interest is affected by the modification and upon those creditors who have filed proofs of claim.

(2) *Notice:* Notice of the proposed modified plan is governed by FED. R. BANKR. P. 3015(g) and L.B.R. 2002-1 and 9013-1.

**Commentary**

[Source: T.L.B.R. 3015-1 and L.B.R. 315, 319, and 320]

Parties may check the judge's webpage for options to appear by telephone and the process for doing so.

The definition of Meet and Confer is contained in L.B.R. 9001-1. The court believes that the obligation to Meet and Confer is an important process for the exchange of information and facilitates the prompt resolution of disputes. The initial burden to timely commence the Meet and Confer is on the debtor, however the chapter 13 trustee or objector may do so as well. Parties are encouraged to initiate the Meet and Confer as close to the time the objection is filed, but in no case later than seven (7) days prior to the hearing on confirmation.



**LOCAL BANKRUPTCY RULE 3017-1.  
DISCLOSURE STATEMENT - NOTICE AND OBJECTIONS**

(a) **Notice:** The plan proponent must mail the order and notice of hearing on disclosure statement and notice of objection deadlines pursuant to FED. R. BANKR. P. 2002(b) and 3017, or as otherwise directed by the court.

(b) **Objections:** Objections to the adequacy of a proposed disclosure statement must be served upon those parties in interest specified in the FED. R. BANKR. P. 3017(a) within the time fixed by the court. Objections must specify clearly the grounds upon which they are based, including the citation of supporting legal authority, if any, and reference to the particular portions of the disclosure statement to which the objection is made. General objections will not be considered by the court.

**Commentary**

[Source: L.B.R. 317]

See Official Form 13, *Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof*.

Guidelines for the adequacy and contents of disclosure statements may be found on the United States Trustee website at [www.usdoj.gov/ust/](http://www.usdoj.gov/ust/).

**LOCAL BANKRUPTCY RULE 3017.1-1.  
CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT  
IN SMALL BUSINESS CASES**

(a) **Motion for Conditional Approval of Disclosure Statement:** A small business debtor who seeks conditional approval of a disclosure statement, must file the disclosure statement and a motion for conditional approval of the disclosure statement pursuant to 11 U.S.C. § 1125(f)(3)(A) ("Motion for Conditional Approval"). The debtor must attach the proposed plan as an exhibit to the Motion, but not file it as a separate document until the court has ruled on the Motion.

(1) **Filing Requirement:** In order to assist the small business debtor and the court in meeting the time requirements of 11 U.S.C. §§ 1121(e)(3) and 1129(e), in the Motion for Conditional Approval, the debtor must set forth the following proposed deadlines and dates:

(A) Date by which the debtor will need the court's conditional approval in order to meet all other deadlines.

(B) Date by which the debtor must file its chapter 11 plan,

(C) Date by which the debtor must mail its plan, disclosure statement, and ballot to all creditors and other parties in interest pursuant to FED. R. BANKR. P. 2002(b) and 3017.

(D) Deadline for all parties to file written objections to the disclosure statement.

(E) Deadline for all parties to file written acceptances or rejections of the plan.

(F) Deadline for all parties to file written objections to the plan.

(G) Date by which the debtor will need a hearing on final approval of the disclosure statement (if any objection is timely filed) and on confirmation of the plan in order to stay within the deadlines in 11 U.S.C. §§ 1121(e) and 1129(e).

The proposed adequacy of disclosure statement and plan objection deadlines and the proposed deadline for acceptance or rejection of the plan may be the same date.

(2) **Notice:** The debtor must serve the Motion for Conditional Approval on the United States Trustee, any case trustee and parties requesting notice.

(3) **Orders:** The court may, in its discretion, enter an order without a hearing on notice as the court may direct.

(b) **Order:** If the court conditionally approves the disclosure statement, the court will issue an order in substantial conformity with L.B. Form 3017.1-1.1.

(1) *Notice*: The debtor must serve the order, plan, disclosure statement, and ballot on all creditors and other parties in interest pursuant to FED. R. BANKR. P. 2002(b) and 3017.

(2) *Certificate of Service*: The debtor must file a certificate of service as to the order, plan, disclosure statement and ballot within three (3) court days of service.

(c) **Objections**: Objections to the adequacy of the disclosure statement must comply with L.B.R. 3017-1(b).

### Commentary

[Source: New]

See Official Bankruptcy Form B25A (Plan of Reorganization in Small Business Case under Chapter 11) and B25B (Disclosure Statement in Small Business Case under Chapter 11). See also Director's Procedural Form 13S and 15S.

Although a hearing is not required, should the debtor request an expedited hearing on conditional approval of the disclosure statement, the court will attempt to accommodate the debtor's proposed deadlines and dates to the extent it is able. Notwithstanding the debtor's requested or proposed dates, the debtor must comply with the applicable time frames and requirements to obtain an extension pursuant to 11 U.S.C. §§ 1121(e) and 1129(e).

## LOCAL BANKRUPTCY RULE 3017-2. COMBINED CHAPTER 11 PLAN AND DISCLOSURES IN SMALL BUSINESS CASES

(a) **Motion to File a Chapter 11 Plan Without a Separate Disclosure Statement**: A small business debtor who seeks to file a plan without a separate disclosure statement pursuant to 11 U.S.C. § 1125(f)(1), must *first* file a motion for determination that the plan itself provides adequate information and that a separate disclosure statement is not necessary (the "Motion").

(1) *Filing Requirement*: In order to assist the small business debtor and the court in meeting the requirements of 11 U.S.C. §§ 1121(e) and 1129(e), the Motion must set forth the following *proposed* deadlines and dates:

(A) Date by which the debtor will need the court's initial determination regarding adequate information in order to meet all other deadlines.

(B) Date by which the debtor must file its chapter 11 plan.

(C) Date by which the debtor must mail its plan and ballot to all creditors and other parties in interest pursuant to FED. R. BANKR. P. 2002(b) and 3017.

(D) Deadline for all parties to file written acceptances or rejections of the plan.

(E) Deadline for all parties to file written objections to the plan and final determination under 11 U.S.C. § 1125(f)(1).

(F) Date by which the debtor will need a hearing on confirmation of the plan in order to stay within the deadlines in 11 U.S.C. §§ 1121(e) and 1129(e).

The proposed plan and disclosures objection deadline and proposed acceptance or rejection deadline may be the same date.

(2) *Notice*: The debtor must serve the Motion on the United States Trustee, any case trustee and parties requesting notice.

(3) *Orders*: The court may, in its discretion, enter an order without a hearing on notice as the court may direct.

(b) **Order**: If the court initially determines that the plan itself provides adequate information and that a separate disclosure statement is not necessary, the court will issue an order in substantial conformity with L.B. Form 3017-2.1.

(1) *Notice*: The debtor must serve the order, plan and ballot on all creditors and other parties in interest pursuant to FED. R. BANKR. P. 2002(b).

(2) *Certificate of Service*: The debtor must file a certificate of service as to the order, plan and ballot within three (3) court days of service.

(c) **Objections**: Objections to the information and disclosures contained in the plan must comply with L.B.R. 3017-1(b).



### Commentary

[Source: New]

The court will attempt to accommodate the debtor's proposed deadlines and dates to the extent it is able. Notwithstanding the debtor's requested or proposed dates, the debtor must comply with the applicable timeframes and requirements to obtain an extension pursuant to 11 U.S.C. §§ 1121(e) and 1129(e).

## LOCAL BANKRUPTCY RULE 3022-1. CHAPTER 11—FINAL REPORT/DECREE

(a) **Chapter 11 Final Report and Motion for Final Decree:** Immediately after the estate is fully administered, the debtor-in-possession must file a final report and motion for final decree in substantial conformity with L.B. Form 3022-1.1 (business debtor) or L.B. Form 3022-1.2 (individual debtor) and serve it on the U.S. Trustee and parties requesting notice.

(b) **Objection:** If no objection has been filed within 30 days of the filing of the final report and motion for final decree, the court will presume that the estate has been fully and properly administered and a final decree will enter.

(c) **Final Decree:** The final report and motion for final decree must be accompanied by a proposed order in substantial conformity with L.B. Form 3022-1.3 (business debtor) or L.B. Form 3022-1.4 (individual debtor).

### Commentary

[Source - L.B.R. 215(b)]

See the *Amended Memorandum of Understanding Between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closings and Post Confirmation Chapter 11 Monitoring*, dated April 1, 1999.

See also L.B.R. 2015-1 for other reporting requirements.

## LOCAL BANKRUPTCY RULE 4001-1. RELIEF FROM AUTOMATIC STAY

(a) **Motions for Relief From Automatic Stay Under 11 U.S.C. § 362(d) Against Debtor:**

(1) *Selection of Hearing Date:* Each division maintains a separate motion for relief from stay calendar. Information as to the time and dates of each division's calendar may be obtained from the assigned judge's staff or the court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov). All motions for relief from stay must be set for hearing on the calendar of the division to which the case is assigned. A party desiring to file a motion for relief from stay in a bankruptcy case will select from the calendar of available hearing dates a proposed hearing date, which must be the latest hearing date available on the assigned judge's calendar which is not more than thirty (30) days from the date the motion for relief from stay is filed with the court.

(2) *Waiver of Rights under 11 U.S.C. § 362(e):* In the event the movant sets a hearing date beyond thirty (30) days, the movant is deemed to have waived its right under 11 U.S.C. § 362(e) to automatic relief after thirty (30) days.

(3) *Notice of Hearing and Time to Object:* Subject to the provisions of this L.B.R., the movant must comply with the provisions of L.B.R. 9013-1. In addition to the parties specified in FED. R. BANKR. P. 4001, the notice and motion must be served on the debtor and debtor's counsel, the United States Trustee, the case trustee, and any party with an interest, such as a party claiming lien rights in property against which the movant seeks relief. The notice of hearing must provide that any objection and request for hearing must be filed by a specific date that is at least seven (7) days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing.



(4) *Mandatory Motion Requirements:* In addition to complying with L.B.R. 9013-1, the movant must:

(A) plead with specificity facts supporting the requirements of 11 U.S.C. § 362(d);

(B) if, as a basis for relief, a default is alleged as to payment on a business or consumer debt, attach a detailed, understandable payment history regarding the debt and arrearages;

(C) file and serve a notice in substantial conformity with L.B. Form 4001-1.1;

(D) if the debtor or co-debtor is an individual, file a Servicemembers Civil Relief Act ("SCRA") Affidavit pursuant to L.B.R. 4002-2(c);

(E) file and serve a proposed order in substantial conformity with L.B. Form 4001-1.3; and

(F) pay the prescribed filing fee.

The motion must include the type of information, as applicable, outlined in the Guidelines for Motions for Relief from Stay L.B. Rule 4001-1App. The failure to provide such detail may result in the denial of the motion without prejudice and without further notice or hearing.

(5) *No objections:* If no objections are filed and the Movant wants an order granting the requested relief, the Movant may file a certificate of non-contested matter, L.B. Form 4001-1.2, no sooner than the day of the scheduled hearing.

**(b) Motions for Relief from Stay Under 11 U.S.C. §§ 1201 or 1301 Against Co-Debtor:** The procedures for seeking relief from the co-debtor stay are the same as that specified in (a) above except:

(1) the party must select a hearing date that is not more than twenty (20) days from the date of the motion, and

(2) the notice of hearing must provide that any objection and request for hearing must be filed by a specific date that is at least seven (7) days prior to the hearing date and that, if no objection to the requested relief is timely filed, the relief requested in the motion may enter without a hearing.

In the event that the movant sets a hearing date beyond twenty (20) days, the movant is deemed to have waived its right to relief within twenty days under 11 U.S.C. § 1201(d) and 1301(d). If the movant files a combined motion under 11 U.S.C. § 362(d) and § 1201 or 1301, the movant will be deemed to have waived their rights under § 1201(d) or § 1301(d) to automatic relief after twenty (20) days.

**(c) Procedures for Preliminary Hearings:** The following procedures apply at preliminary hearings on motions for relief from stay:

(1) No testimony will be taken. Evidence will only be accepted by way of an oral offer of proof and exhibits. Such offers must provide sufficient detail to enable the court to make specific findings based thereon and must include the identity of the witnesses available to testify at an evidentiary hearing and an explanation of their expected testimony. Written summaries of witnesses' testimony are not required but may be submitted.

(2) Parties must exchange all exhibits they intend to use, or may reasonably anticipate using, no later than 24 hours prior to the preliminary hearing. The exhibits must be tendered to the court at the hearing, together with a statement identifying the witness or witnesses who would be called to identify and lay the foundation for the introduction of such exhibits.

(3) Objections to tendered evidence should be made at the conclusion of each party's declaration. Any objection must identify the evidence objected to and specify the grounds for the objection.

(4) The court will treat the hearing as a preliminary hearing and, based on the proffers of evidence, if there is a reasonable likelihood that the party opposing relief will prevail at a final hearing, may set the matter over for a final hearing. In the alternative, the court may consider the offers of proof and, absent the need for an evidentiary hearing, grant or deny the request for relief from stay.

(5) *Expert Witnesses:* Any party anticipating the use of an expert witness for a final hearing will, at the initial hearing, comply with FED. R. BANKR. P. 7026(a)(2).

**(d) Telephonic Hearings:** Telephonic appearances may be permitted in accordance with the information on chambers' procedures for the presiding judge located on the court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov). Any party appearing telephonically must exchange witness lists and exhibits with the other parties and file them with the court no later than 24 hours prior to the hearing.

### Commentary

[Source: L.B.R. 401 and GPO 2005-2]

See FED. R. BANKR. P. 4001 and 9014.

Parties are advised to use the proper forms applicable to this L.B.R. 4001-1 (relief from stay) and not those applicable to L.B.R. 4001-2 (termination/absence of stay).

See Servicemembers Civil Relief Act of 2003 ("SCRA"), 50 App. U.S.C. § 501 et seq. and L.B.R. 4002-2 for further information on SCRA.

## LOCAL BANKRUPTCY RULE 4001-2.

### TERMINATION, ABSENCE, OR EXTENSION OF AUTOMATIC STAY

**(a) Procedures:** Motions filed pursuant to this L.B.R. 4001-2 are subject to the procedures in L.B.R. 4001-1(a)(1) Selection of Hearing Date, (a)(3) Notice of Hearing and Time to Object, (c) Procedures for Preliminary Hearing and (d) Telephonic Hearings.

**(b) Forms:** Parties must file and serve a notice and proposed order in substantial conformity with L.B. Forms 4001-2.1 and 4001-2.2. respectively.

**(c) Requests Pursuant to 11 U.S.C. § 362(c)(3)(B) (to continue and extend the stay) and 11 U.S.C. § 362(c)(4)(B) (for the stay to take effect):**

(1) Motions filed pursuant to 11 U.S.C. § 362(c)(3)(B) and (c)(4)(B) must:

(A) explain why this later case is filed in good faith as to the creditor(s) to be stayed, and specify whether the request extends to all creditors or only specified creditors; and

(B) unless ordered otherwise, give at least fourteen (14) days notice of the objection date and hearing date to the applicable trustee, debtor, debtor's attorney and all affected creditors.

(2) If seeking to extend the stay to certain property of the estate, service of the motion and notice must also comply with the requirements of FED. R. BANKR. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.

(3) Motions filed pursuant to 11 U.S.C. § 362(c)(3)(B) should be filed with the petition or promptly thereafter in order to permit compliance with statutory time limits.

(4) Motions filed pursuant to 11 U.S.C. § 362(c)(4)(B) must be filed within 30 days after filing of the petition.

**(d) Requests Pursuant to 11 U.S.C. § 362(h)(1) (to terminate the stay for failure to comply with duties under 11 U.S.C. § 521(a)(2) with respect to personal property):** The movant must plead the following with sufficient specificity:

(1) recital of the facts supporting the requested relief pursuant to the terms of 11 U.S.C. § 362(h)(1);

(2) a detailed description of the property interest securing the debtor's obligation to the movant; and

(3) a statement of whether the debtor timely filed, and performed under, a statement of intention pursuant to 11 U.S.C. § 521(a)(2).

**(e) Requests Pursuant to 11 U.S.C. § 362(h)(2) (determination that property is of consequential value or benefit):**

(1) The motion must explain the basis for the belief that the property is of consequential value or benefit to the estate, describe what adequate protection is appropriate to protect the creditor's interest and whether or not the debtor has delivered the collateral to the trustee.



(2) Service of the motion and notice must also comply with the requirements of FED. R. BANKR. P. 7004 and 11 U.S.C. § 342 as to any creditor who holds or asserts an interest in such property of the estate.

(3) Unless otherwise ordered by the court, motions filed pursuant to 11 U.S.C. § 362(h)(2) must be filed within thirty (30) days after the first date set for the meeting of creditors.

**(f) Requests Pursuant to 11 U.S.C. § 362(j) (confirming termination of the stay):** The movant must plead the following with sufficient specificity to permit the court to grant the motion:

(1) the requirements of 11 U.S.C. § 362(c); and

(2) the facts supporting the requested relief, including the following information regarding the previous case or cases:

(A) case name,

(B) case number,

(C) court where filed,

(D) date filed,

(E) date dismissed,

(F) whether the dismissal was pursuant to 11 U.S.C. § 707(b),

(G) as to a request under 11 U.S.C. § 362(c)(3)(A), describe any formal pre-petition action commenced by the movant; and

(H) any additional relevant information.

### Commentary

[Source: modified guideline]

Parties are advised to use the proper forms applicable to this L.B.R. 4001-2 (termination/absence of stay) and not those applicable to L.B.R. 4001-1 (relief from stay).

Motions to extend the stay under 11 U.S.C. § 362(c)(3)(B) may be summarily denied if they are not timely filed such that meaningful due process can be afforded and a hearing held before the end of the 30-day period set forth in 11 U.S.C. § 362(c)(3)(B). Typically, a motion filed within seven (7) to ten (10) calendar days of the commencement of the case can be timely prosecuted under these guidelines, depending upon the assigned judge's relief from stay hearing dates.

## LOCAL BANKRUPTCY RULE 4001-3. CASH COLLATERAL AND POST-PETITION FINANCING

**(a) Motions:** Except as provided herein and elsewhere in these L.B.R., all cash collateral and/or financing requests under 11 U.S.C. §§ 363 and 364 must be made by motion filed pursuant to FED. R. BANKR. P. 2002, 4001 and 9014 and L.B.R. 2081-1 and 9013-1 as applicable ("Financing Motions").

(1) *Provisions to be Highlighted:* All Financing Motions must:

(A) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated in the appendix at L.B.R. 4001-3(a)App.;

(B) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement by page, paragraph and/or line number; and

(C) provide the justification for the inclusion of each such provision.

(2) *Mandatory Inclusions:* All Financing Motions must also provide a summary of the essential terms of the proposed use of cash collateral and/or financing including, but not limited to:

(A) the maximum borrowing available on a final basis,

(B) the interim borrowing limit,

(C) borrowing conditions,

(D) interest rate,

(E) maturity,



(F) events of default, .

(G) remedies in the event of default,

(H) use of funds limitations,

(I) protections afforded under 11 U.S.C. §§ 363 and 364, and

(J) a line-item budget for both the interim and final order periods, unless the court orders otherwise.

**(b) Interim Relief:** When Financing Motions are filed with the court on or shortly after the date of the entry of the order for relief pursuant to L.B.R. 2081-1, the court may grant interim relief pending review by the interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the court may not approve interim financing orders that include any of the provisions, as specified in L.B.R. 4001-3(a)App.

**(c) Final Orders:** A final order will be entered only after providing parties notice and an opportunity for a hearing pursuant to FED. R. BANKR. P. 4001 and L.B.R.9013-1.

[Amended January 16, 2013, effective February 1, 2013.]

#### Commentary

[Source: From D. Del.; Appendix 4001-3App. from N.D. Cal. UST]

### LOCAL BANKRUPTCY RULE 4001-4.

#### COMMUNICATION NOT IN VIOLATION OF THE AUTOMATIC STAY

**(a) Forms of Communication; Issuance of Monthly Statements is not a Stay Violation:** The following communication and issuance of monthly statements are declared appropriate and not a violation of the automatic stay:

(1) *Permissible Contact with the Debtors:* Secured creditors may contact the debtors about the status of insurance coverage on property that is collateral for the creditor's claim, may respond to inquiries and requests for information about the account from debtors, and may send the debtor statements, payment coupons, or other correspondence that the creditor sends to its nondebtor customers, without violating the automatic stay, provided none of these communications includes an attempt to collect the debt. Permissible forms of communication are those which are sent to debtors by creditors in the ordinary course of business, to the address that the debtor last provided to the creditor by agreement between the debtor and the creditor. In order for communication to be protected under this L.B.R., the communication must indicate it is provided for information purposes and does not constitute a demand for payment.

(2) *Manner of Contacting Debtors:* Permissible communications may be transmitted via electronic mail, facsimile, United States Postal Service, commercial communications carrier, or such other mode as is mutually acceptable to the parties.

#### Commentary

[Source: GPO 2008-1]

This L.B.R. directs that, to the greatest degree possible, the routine flow of information from secured creditors to debtors continue post-petition with respect to secured loans constituting consumer debt (as that term is defined by 11 U.S.C. § 101(8)), in each bankruptcy case where the debtor retains possession of the collateral and continues to make regular installment payments directly to the secured creditor.

### LOCAL BANKRUPTCY RULE 4002-1.

#### DUTIES REGARDING TAX INFORMATION

**(a) Motions Regarding Tax Returns.**

(1) Motions to dismiss pursuant to 11 U.S.C. § 521(e)(2) are governed by L.B.R.

1017-2 and L.B. Form 1017-2.1.

(2) Motions to compel compliance with 11 U.S.C. § 521(f) are governed by L.B.R. 9013-1.

**(b) Redaction of Personal Information in Tax Returns:** The redaction of personal information from tax returns or transcripts provided to the trustee or requesting creditor, or filed with the court, is governed by FED. R. BANKR. P. 4002 and 9037.

**(c) Failure to Redact Personal Information:** The court will not redact any information if the debtor fails to make the redactions required under FED. R. BANKR. P. 4002 and 9037.

#### Commentary

[Source: T.L.B.R. 1017-1 and T.L.B.R. 4002-1]

All tax information filed electronically with the court must be submitted under the “tax information” event which is not publicly available.

Confidentiality of tax returns is governed by FED. R. BANKR. P. 4002(b)(5) and 9037 and the procedures established by the Director of the Administrative Office of the United States Courts. This includes the *Director’s Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521* (September 20, 2005), and any amendments thereto or final guidance that may be established. The Director’s guidance may be located at the U.S. Court’s website at [www.uscourts.gov/bankruptcycourts](http://www.uscourts.gov/bankruptcycourts).

See L.B.R. 1007-5 for information on Social Security numbers and privacy, and L.B.R. 1017-2 for dismissal for failure to provide tax returns under 11 U.S.C. § 521(e)(2).

### LOCAL BANKRUPTCY RULE 4002-2.

#### SERVICEMEMBERS CIVIL RELIEF ACT OF 2003 (“SCRA”)

**(a) Debtor’s Statement of Military Service:** In order to assist the court in its determination of a debtor’s status under the Servicemembers Civil Relief Act of 2003 (“SCRA”), 50 App. U.S.C. § 501 et seq., a debtor should inform the court if he/she is a servicemember subject to the provisions of SCRA at the time of the filing of the bankruptcy petition by filing Director’s Procedural Form 202. If, at any time during the pendency of the bankruptcy proceedings a debtor becomes entitled to the protections of SCRA, he or she should inform the court of the change in military status within fourteen (14) days of the change in status by filing an amended Director’s Procedural Form 202.

**(b) Debtor’s Failure to Comply:** Failure by the debtor to inform the court of his/her military status does not constitute a waiver of the debtor’s protections under SCRA, and does not alter the responsibility of a party to investigate the debtor’s servicemember status before filing any of the papers referred to in L.B.R. 4001-1 and 7055-1.

**(c) Affidavit Required for Motion for Default Judgment and Motions for Relief from the Automatic Stay:** At the time of the filing of a motion for default judgment in an adversary proceeding pursuant to FED. R. BANKR. P. 7055 or a motion for relief from stay under FED. R. BANKR. P. 4001, if the party against whom relief is sought is an individual, the plaintiff/ovant must file an affidavit with the court which states (1) whether or not the defendant/respondent is in the military service, and indicating the necessary facts to support said affidavit; or (2) if the plaintiff/ovant is unable to determine whether or not the defendant/respondent is in the military service, a statement that the plaintiff/ovant is unable to so determine. The court will deny motions for default judgment and motions for relief from stay if the plaintiff/ovant does not supply the required affidavit. If the court is unable to ascertain the defendant’s/respondent’s military status from the affidavit, it may require the plaintiff/ovant to post a bond before entering a default judgment or an order lifting the stay.

#### Commentary

[Source: GPO 2005-2]

Information on how to obtain verification of the military status of an individual is



available from the Clerk's office or online at the court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov).

### LOCAL BANKRUPTCY RULE 4003-1. EXEMPTIONS

(a) **Objections:** Objections to exemptions must be prosecuted according to the procedures in L.B.R. 9013-1.

(b) **Notice:** The objection must be accompanied by a notice in substantial conformity with L.B. Form 9013-1.1 with at least fourteen (14) days from the date of mailing for the filing of a response.

(c) **Hearing:** Upon the filing of a Certificate of Non-contested Matter, the court may enter an order without a hearing. Upon the filing of a Certificate of Contested Matter, the court may set a hearing on the matter.

#### Commentary

[Source: New.]

### LOCAL BANKRUPTCY RULE 4003-2. LIEN AVOIDANCE

(a) **Motions to Void Judicial Liens Under 11 U.S.C. § 522(f):** A motion to void judicial liens under 11 U.S.C. §522(f) (the "Motion") must include the following:

(1) Identification of the lien creditor. The caption, title of pleading, or introductory paragraph must clearly identify the affected lien creditor. It is not sufficient to only attach a copy of a transcript of judgment, without also identifying the affected creditor in the body of the pleadings, and

(2) Specific grounds for relief under 11 U.S.C. § 522(f) (e.g. whether the lien impairs the debtor's exemption, the purported value of the property, the amount of the various liens filed against the property, whether the debtor claimed a homestead exemption on Schedule C), and

(3) Evidence that a lien was actually recorded against the homestead (e.g. specific recording information and/or a copy of the transcript of judgment).

(b) **Notice:** The Motion must be accompanied by a notice in substantial conformity with L.B. Form 9013-1.1 with at least fourteen (14) days from the date of mailing for the filing of an objection.

(c) **Certificate of Service:** The Motion must be accompanied by a Certificate of Service showing that both the Motion and notice were served on the affected lien creditor in the manner required by FED. R. BANKR. P. 7004 and 9014.

(d) **Proposed Order:** The Motion must be accompanied by a proposed order. The proposed order must contain an adequate description of the property and must not purport to do anything more than declare the lien void. The proposed order should not place an affirmative duty on the lien creditor to file documents to remove the lien from the chain of title.

#### Commentary

[Source: New]

### LOCAL BANKRUPTCY RULE 4004-1. DISCHARGE

(a) **Financial Management Course Certification in Individual Debtor Chapter 7 and 13 cases (and Individual Debtor Chapter 11 Cases in which 11 U.S.C. § 1141(d)(3) Applies):** The court cannot grant a discharge to individual debtors in Chapter 7 and 13 cases without receipt of a statement regarding completion of a course in personal financial management as required by FED. R. BANKR. P. 1007(b)(7). Chapter 7 and 13



cases that have been fully administered, other than the granting of a discharge and the filing of the financial management course certification, will be closed by the court without the entry of a discharge. A new filing fee will be required to reopen the case to file the financial management certification and to permit the entry of the discharge.

**(b) Individual Debtor Cases in which 11 U.S.C. § 522(q)(1) Applies:** The court cannot grant a discharge if there is reasonable cause to believe that 11 U.S.C. § 522(q)(1) may be applicable to the debtor and there is a conviction of a felony as defined in 18 U.S.C. § 3156, or pending any proceeding in which the debtor may be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A), or may be liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B). Prior to the entry of the discharge, any party, including the debtor, a creditor, case trustee, and United States Trustee, with knowledge that 11 U.S.C. § 522(q)(1) may apply to the debtor, shall file a statement justifying the assertion that there is reasonable cause to believe 11 U.S.C. § 522 (q)(1) applies.

### Commentary

[Source: T.L.B.R. 4004-1]

See L.B. Form 3015-1.10, Chapter 13 Debtor's Certification to Obtain Discharge and L.B. Form 3022-1.2, Chapter 11 Final Report and Motion for Final Decree (for individual chapter 11 debtor).

## LOCAL BANKRUPTCY RULE 4008-1. REAFFIRMATION OF DISCHARGEABLE DEBTS

**(a) Motion:** A motion for approval of a reaffirmation agreement pursuant to 11 U.S.C. § 524(d) may be filed in accordance with 11 U.S.C. § 524(d) and FED. R. BANKR. P. 4008 by either the debtor or a creditor who is a party to the agreement.

### **(b) Form:**

(1) *Cover Sheet:* Use of L.B. Form 4008-1.1 is mandatory and must be completed in its entirety and filed along with any reaffirmation agreement.

(2) *Reaffirmation Agreement:* Use of Director's Procedural Forms 240 series is mandatory. A reaffirmation agreement without a completed Director's Procedural Form 240A will not be considered by the court.

(3) *Attachment to Reaffirmation Agreement-Creditor Declaration Regarding the Agreement:* The creditor must state whether the original loan documents or sale and security agreement between the parties provide for (1) a default upon borrower filing for bankruptcy relief or becoming insolvent and/or (2) the cross-collateralization of other assets of the debtor. The Creditor may use L.B. Form 4008-1.2 to fulfill this requirement or sign the L.B. Form 4008-1.1.

### **(c) Hearing:**

(1) *Certification by Debtor's Attorney:* If the debtor's attorney has certified that the reaffirmation agreement will not impose an undue hardship on the debtor and the court has no other concerns regarding the agreement, no hearing will be conducted and no order will be entered.

(2) *No Certification by Debtor's Attorney:* If the debtor's attorney has not certified the reaffirmation agreement for any reason, the court may set the matter for hearing and may require the debtor's attorney to participate in the hearing.

### Commentary

[Source: L.B.R. 408 and GPO 2008-2]

Director's Form 240B contains the form of motion to be used, as applicable.

**LOCAL BANKRUPTCY RULE 5001-2.  
CLERK - OFFICE LOCATION AND HOURS**

(a) **Office Location:** The Clerk for the United States Bankruptcy Court, District of Colorado, is located at 721 19th Street, Denver, CO 80202-2508.

(b) **Internet Address:** [www.cob.uscourts.gov](http://www.cob.uscourts.gov)

(c) **Regular Business Hours:** 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, court closures due to inclement weather or other court order.

(d) **Public Access to the Docket:**

(1) *Internet Access:* Any person or organization may obtain access to the “read only” area of the court’s Internet site at [www.cob.uscourts.gov](http://www.cob.uscourts.gov) by obtaining a password and paying any fees established for such access. Those who have access to the court’s electronic filing system but who are not Electronic Filers may retrieve docket sheets and documents, but they may not file documents.

(2) *Access at the Court:* Access to all public documents filed with the court is available, without obtaining a password, in the Clerk’s office during regular business hours. Conventional and certified copies of electronically filed documents may be purchased at the Clerk’s office during regular business hours. The fee for copying and certifying must be in accordance with the Schedule of Miscellaneous Fees promulgated by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1930(b) which can be found on the court’s website.

**Commentary**

[Source: New]

**LOCAL BANKRUPTCY RULE 5003-1.  
RECORDS RETENTION**

The Clerk will maintain paper records according to the following schedule:

(a) Statement of Social Security number - five (5) years from the filing date;

(b) Proofs of Claim - three (3) years from the filing date; and

(c) All others - for such time as the Clerk of Court deems to be necessary and reasonable after entry

**Commentary**

[Source: Second Amended GPO 2007-3]

If a party objects to the destruction of records, it may file a motion to extend the time period.

**LOCAL BANKRUPTCY RULE 5005-4.  
ELECTRONIC FILING**

(a) **Application of Rule:** This L.B.R. applies to attorneys who file, on average, one or more documents per week and others as ordered or authorized by the court. The attorneys subject to this L.B.R. must register to be electronic filers. Any attorney who is an electronic filer and who signs a document intended for filing as an attorney must file the document electronically. Attorneys who file, on average, less than one document per week may, at their discretion, file documents in an electronic format. Only attorneys and their supervised staff may become electronic filers.

(b) **Mandatory Electronic Filing Requirements:** In lieu of filing petitions, pleadings and other papers in hard copy format as prescribed in L.B.R. 9004-1 and other rules, electronic filers must file documents in an electronic format. The court may, in any matter at any time, request that a copy of a document be submitted to the judge in paper format.

(c) **Electronic Records:** Except for documents that exceed the court’s electronic storage capability found on the court’s website, all documents filed with the court, either electroni-



cally or in paper format, will be converted to and stored as electronic documents. The electronic files, consisting of the images of documents filed in cases or proceedings and documents filed by electronic means, constitute the official record of the court together with any other records kept by the Clerk.

**(d) Electronic Signature:** The use of an attorney's password to file a document electronically constitutes the original signature of that attorney for purposes of FED. R. BANKR. P. 9011.

**(e) Password Non-Transferable:** Each attorney, law firm or other person that obtains a password for electronic filing is responsible for its security and use. No attorney, law firm or other person may knowingly permit or cause to permit an electronic filer's password to be utilized by anyone other than an authorized member, employee or agent of the electronic filer's law firm.

**(f) Waiver of Notice and Service by Mail:** The request for and receipt of an electronic filing password from the court constitutes a request for, and consent to, electronic service pursuant to FED. R. BANKR. P. 9036 of all notices, orders, decrees and judgments *issued by the court* and, except as otherwise provided in these L.B.R., a waiver of the right to receive all notice and service by mail *from the court*.

**(g) ECF Procedures:** Electronic filers must follow the ECF Procedures as defined in L.B.R. 9001-1(a)(6). Future versions of the procedures as published by the court will be effective the date of the published revision. In case of conflict between these L.B.R. and the ECF Procedures, the ECF Administrative Procedures in L.B.R. 5005-4App. control.

**(h) Registration and Filing Requirements:** Information regarding the procedures for registration and instructions on how to file cases electronically are found in L.B.R. 5005-4App. Categorization of documents can be found on the court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov).

**(i) Electronic Filer Agreement:** Electronic filers must enter into an agreement with the court contained on the Electronic Filer Registration Form found in the ECF Administrative Procedures in L.B.R. 5005-4App.

**(j) Docket:** The electronic filing of a document in accordance with the ECF Procedures constitutes entry of that document on the docket kept by the Clerk pursuant to FED. R. BANKR. P. 5003. All orders, decrees, judgments and proceedings of the court will, in accordance with the ECF Procedures, be entered on the docket kept pursuant to FED. R. BANKR. P. 5003 and for the purposes of FED. R. BANKR. P. 9021.

**(k) Retention of Original Signatures:** Electronic filers may file all electronic documents with electronic signatures. Documents that require the signature of the debtor shall be maintained by the electronic filer with the original signature(s) in paper form for two years following the expiration of all time periods for appeals after entry of a final order terminating the case or proceeding. Documents required to be retained by counsel with actual signatures of the debtor include Form 21, voluntary petition, statements, schedules, lists and amendments thereto.

**(l) Correction of Errors or Omissions:**

(1) Electronic filers notified by the Clerk via a public docket entry of an error or omission in an electronic filing must correct the error or omission by the time stated within the notification. Failure to timely correct the error or omission, unless the court orders otherwise, will result in the erroneous document not being acted upon by the court.

(2) If electronic filers use the incorrect event for the public docket when filing a document, the Clerk may re-enter the document correctly if it is an objection or a document that is easily identified from the document's caption as an emergency motion or a time sensitive motion. Such steps are taken to safeguard the integrity of the court's docket while timely providing an accurate public record for proper case administration.

**(m) Temporary Deactivation or Revocation of Password and Authority to File Electronically:** The court reserves the right to temporarily deactivate an electronic filer's password for failure to comply with this rule, the electronic filer Registration Form agreement or the ECF Procedures. In addition, the court reserves the right to revoke an attorney's authority to file electronically after notice and hearing before the judge assigned



to the specific case in which the attorney has failed to comply with the ECF Procedures or has engaged in other misuse of the electronic case filing system.

### Commentary

[Source: GPO 2001-8]

See L.B.R. 9004-1, 9011-1, 9036-1, and L.B.R. 5005-4App. Parties should also check the court's website.

Documents requiring signatures of more than one party may be filed electronically provided the document contains all necessary signatures whether those signatures are electronic or original.

## LOCAL BANKRUPTCY RULE 5010-1. REOPENING CASES

**(a) Motions:** Motions to reopen bankruptcy cases must be accompanied by the payment of any prescribed filing fees. Copies of the motion must be served on the United States Trustee, the trustee previously assigned to the case, the twenty (20) largest unsecured creditors in a chapter 11 case, and upon any party against whom relief will be sought upon reopening of the case.

**(b) Filing Fees:** Payment of the filing fee to reopen a bankruptcy case, when a motion is filed by a trustee to reopen a case due to the discovery of additional assets in the estate, is payable at the time the motion to reopen is filed. The trustee may file a motion to have the payment of the fee delayed until there are sufficient assets in the estate to pay such fee.

**(c) Filing Complaint to Determine Dischargeability of Debt:** An adversary proceeding to determine the dischargeability of a debt under FED. R. BANKR. P. 4007(b) or for declaratory relief regarding the effect of a discharge under 11 U.S.C. § 524(a) may be commenced, maintained and concluded whether or not the underlying bankruptcy case has been closed under FED. R. BANKR. P. 5009 or reopened under FED. R. BANKR. P. 5010, unless otherwise ordered by the court.

### Commentary

[Source: L.B.R. 510]

Absent a court order, there is no exception to the requirement to pay the appropriate filing fees for a motion to reopen a case in order for the debtor to file the Debtor's Financial Management Certificate so that a discharge may be entered.

## LOCAL BANKRUPTCY RULE 5011-1. MOTIONS FOR WITHDRAWAL OF THE REFERENCE

**(a) Motion:** A motion for withdrawal of a case or proceeding must be accompanied by payment of the prescribed filing fee and be filed with the Clerk together with such other portions of the record as may be necessary for consideration of the motion.

**(b) Service:** Copies of the motion must be served on the debtor, the United States Trustee, any case trustee, the twenty (20) largest unsecured creditors in a chapter 11 case, those requesting notice and upon any party against whom relief is sought in the proceeding.

**(c) Objection:** Within fourteen (14) days after service of a copy of the motion, a party in interest may file with the Clerk, and serve on the movant and the other parties to the proceeding, an objection to the motion and a designation of any additional portions of the record for the district court's determination of the motion.

**(d) Reply:** The movant may file a reply within seven (7) days of service of an objection.

**(e) Record:** The Clerk of the Bankruptcy Court will refer the motion and record to the Clerk of the U.S. District Court for hearing before that court pursuant to FED. R. BANKR. P. 5011(a).

### Commentary

[Source: L.B.R. 511]

## **LOCAL BANKRUPTCY RULE 5073-1. PHOTOGRAPHY, RECORDING DEVICES & BROADCASTING**

The use or operation of any camera, recording device, photo-capable cellular phone or other mechanical means for the visual reproduction of the likeness of an individual or object, or for the auditory reproduction of a voice or sound, is prohibited inside all courtrooms occupied by the court and in all rooms used for meetings pursuant to 11 U.S.C. § 341 except as otherwise provided by the Judicial Conference. This rule also applies to those participating in a hearing or meeting by telephone, video conference, or other means from outside the courtroom or meeting rooms. The use or operation of any such device is further prohibited in all other premises occupied by the court except as proscribed by the U.S. District Court. This L.B.R. is not applicable to employees of the court or designees of the United States Trustee or to any certified court reporter acting pursuant to their official duties. The court in its discretion may waive this L.B.R.

### Commentary

[Source: L.B.R. 507(c)]

## **LOCAL BANKRUPTCY RULE 5095-1. INVESTMENT OF ESTATE FUNDS**

**Deposits to the Registry:** No funds may be deposited to or withdrawn from the court registry except as authorized by court order. Such an order must specify in detail the amounts deposited by or to be paid to any party, and must state the names and addresses of any person or company to whom funds are to be paid. Funds may be deposited into an interest-bearing account upon obtaining a specific order so directing. A copy of the order must be personally served on the Clerk by the party who obtained the order.

### Commentary

[Source: L.B.R. 505(c)]

See also FED. R. BANKR. P. 7067.

## **LOCAL BANKRUPTCY RULE 6004-1. SALE OF ESTATE PROPERTY**

**(a) Sales Free and Clear of Liens:** A motion to sell free and clear of liens under 11 U.S.C. § 363(f) must identify by name the lienholders whose property rights are affected by the motion. The affected lienholders must be served with a complete set of moving papers pursuant to FED. R. BANKR. P. 7004(b). The motion must allege the factual basis demonstrating that the motion comes within one or more subsections of 11 U.S.C. § 363(f)(1)-(5). If the motion does not so identify the lienholders, it will be considered as an application to sell property subject to existing liens.

**(b) Bidding Procedures:** A motion to approve procedures for bidding for an asset or assets may be filed separately in advance of filing a sale motion or combined with the sale motion, and in appropriate circumstances, on more limited and shortened notice than the sale motion.

**(c) Form of Order:** The proposed form of order granting a motion to sell free and clear of liens must specify each lienholder whose interest is to be affected by the order and whether such liens will attach to the proceeds of the sale.

**Commentary**

[Source: L.B.R. 604 and N.D. Cal.]

See L.B.R. 2002-1, 2081-1, 9013-1 and FED. R. BANKR. P. 6003 and 9006.

**LOCAL BANKRUPTCY RULE 7001-1.  
ADVERSARY PROCEEDINGS - GENERAL**

**(a) Adversary Captions:** All pleadings in an adversary action must have a caption in substantial conformity with Director's Procedural Form 16D. The caption must also state the initials of the judge assigned to the complaint.

**(b) Cover Sheet:** A cover sheet in substantial conformity with Director's Procedural Form 104 must accompany all adversary proceeding complaints that are not electronically filed.

**(c) Proper Sequence for Adversary Proceeding Filings (Paper Filers Only):** The following forms are separate documents. Please do not staple them together:

- (1) Adversary Proceeding Cover Sheet (Director's Procedural Form 104) - Original Only
- (2) Complaint - Original
- (3) Summons - Original.
- (4) Emergency Motions, if any

**Commentary**

[Source: LBR 105(c) and 102(f)]

Electronic filers should follow current ECF Procedures which can be found on the court's website at [www.cob.uscourts.gov](http://www.cob.uscourts.gov) and L.B.R. 5005-4App.

**LOCAL BANKRUPTCY RULE 7007-1.  
ADVERSARY PROCEEDINGS - RESPONSES TO MOTIONS**

**Response Period:** Unless otherwise provided for by a statute, rule or court order, any response to a motion must be filed with the court and served on interested parties within fourteen (14) days after service of the motion. Replies to responses to motions may be filed only after obtaining leave of the court. Motions will be set for oral argument only if the court determines oral argument may be of assistance.

**Commentary**

[Source: New]

This rule also applies where the court directs the use of FED. R. BANKR. P. 7000 series of adversary proceeding rules in a specific contested matter.

**LOCAL BANKRUPTCY RULE 7007.1-1.  
CORPORATE OWNERSHIP STATEMENT**

The Corporate Ownership Statement required under FED. R. BANKR. P. 7007.1 must be in substantial conformity with L.B. Form 1007-4.1.

**Commentary**

[Source: New.]

See L.B.R. 1007-4.

**LOCAL BANKRUPTCY RULE 7016-1.  
PRE-TRIAL PROCEDURE FOR ADVERSARY PROCEEDINGS**

Each division will provide parties with instructions once the case is at issue.



### Commentary

For additional information, see L.B.R. 7026-1 and each division's website.

## LOCAL BANKRUPTCY RULE 7026-1. DISCOVERY - GENERAL

**(a) Discovery and Trial Schedule:** When an adversary proceeding is at issue, the court may direct the parties to develop a discovery plan and pre-trial deadlines and file a joint report on the same pursuant to FED. R. CIV. P. 26(b) or, in its discretion, may set a trial.

**(b) Depositions:** Unless otherwise agreed by the parties and the deponent or ordered by the court, reasonable notice for the taking of depositions or conducting examinations under FED. R. BANKR. P. 7030 (FED. R. CIV. P. 30(b)(1)) is at least fourteen (14) days.

**(c) Discovery Material:** Discovery materials — including deposition transcripts, interrogatories and answers, requests for production or inspection, requests for admissions and responses to them, and all initial disclosures — are not to be filed with the court unless they are the subject of a discovery motion or as otherwise ordered. If interrogatories, requests, answers, responses, or other disclosures are to be used at hearing or trial, the portions to be used shall be marked and prepared for offering as evidence(s) at the outset of the hearing or trial insofar as their use can reasonably be anticipated.

**(d) Motions to Compel or for Protective Orders:** Motions under FED. R. BANKR. P. 7026 and 7037 seeking the type of relief provided for in FED. R. CIV. P. 26(c) and 37(a), directed to interrogatories or requests under FED. R. BANKR. P. 7033 or 7034, or to responses thereto, must set forth the interrogatory, request and response constituting the subject matter of the motion. The filing of a motion for protective order stays the discovery in question pending further order of the court.

### Commentary

[Source: L.B.R. 726]

This rule is intended to supplement the Federal Rules of Civil Procedure with respect to discovery and discovery disputes, Fed. R. Bankr. P. 7026 through 7037.

## LOCAL BANKRUPTCY RULE 7026-2. SPECIAL PROVISIONS REGARDING LIMITED AND SIMPLIFIED DISCOVERY

**(a) Applicability:** Unless modified by order of the court or by written agreement of the parties, the provisions of this L.B.R. apply in all adversary proceedings and contested matters under FED. R. BANKR. P. 7001 and 9014.

**(b) Depositions:** A party may take the deposition of only three (3) persons.

**(c) Interrogatories:** A party may serve only one (1) set of written interrogatories upon each adverse party. The number of interrogatories to any one party must not exceed thirty (30), each of which shall consist of a single question.

**(d) Other Discovery:** In all other respects, the Federal Rules of Bankruptcy Procedure govern the procedures and manner of taking discovery.

**(e) Additional Discovery:** A request for discovery beyond that which is provided for herein may be made by the parties in their joint FED. R. BANKR. P. 7026 written report. Unless the parties otherwise agree, any requests after the filing of the written report must be made by motion.

### Commentary

[Source: L.B.R. 726.1]

**LOCAL BANKRUPTCY RULE 7041-1.**  
**NOTICE REQUIREMENTS FOR DISMISSAL OF PROCEEDINGS TO DENY**  
**DISCHARGES**

**(a) Motion Required to Dismiss Complaint Denying or Revoking Discharge:** No adversary proceeding objecting to a debtor's discharge under 11 U.S.C. §§ 727, 1141, 1228 or 1328 will be dismissed except on motion filed in the adversary proceeding, with notice and an opportunity to object served upon the United States Trustee and the case trustee, and other parties as the court may direct. The motion must disclose all terms of any agreement made between the plaintiff and the debtor in relation to the litigation and its proposed dismissal.

**(b) Procedures.** Motions under this section must use L.B. Form 7041.1 and the notice and hearing procedures in L.B.R. 9013-1. Appropriate orders may be requested using L.B. Forms 9013-1.3 or 9013-1.4, as applicable.

**Commentary**

[Source: New.]

See L.B. Form 7041-1 and Official Form 16 D for adversary caption.

**LOCAL BANKRUPTCY RULE 7055-1.**  
**DEFAULT - FAILURE TO PROSECUTE**

**(a) Entry of Default:** To obtain entry of default pursuant to FED. R. CIV. P. 55(a), the party seeking entry of default must file a motion requesting entry of Clerk's default, together with a supporting affidavit verifying the following:

(1) The party against whom default is sought has been properly served with a summons and a complaint, including the date of the issuance of the summons and the date of service of the summons and complaint. A copy of the summons and the proof of service must be attached as exhibits;

(2) The party has failed to plead or otherwise defend within the allowed time;

(3) The party against whom default is sought has not requested or has not been granted an extension of time to plead or otherwise defend.

**(b) Default Judgment:** A party seeking the entry of a default judgment must file a motion for default judgment containing the following:

(1) A request for entry of default judgment;

(2) An affidavit in support of default judgment, executed by an individual having personal knowledge of the facts therein, which sets forth with specificity each element of any claim on which judgment is requested. In cases involving individuals, the supporting affidavit must allege that the defendant is not an infant or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared in the action;

(3) In cases involving individuals, the SCRA affidavit required by L.B.R. 4002-2;

(4) If appropriate, documentary evidence to support the allegations in the affidavit (attached as exhibits);

(5) A proposed form of order approving the motion; and

(6) A proposed form of judgment.

**(c) Proof Hearing:** The court will advise the party seeking entry of default judgment of the time and date of a proof hearing, if required.

**Commentary**

[Source: New.]

See also FED. R. BANKR. P. 9023 and 9024 and FED. R. CIV. P. 55.

**LOCAL BANKRUPTCY RULE 7056-1.  
SUMMARY JUDGMENT**

**(a) Motion and Memorandum in Support:** Any motion for summary judgment pursuant to FED. R. BANKR. P. 7056, must include:

- (1) a statement of the burden of proof;
- (2) the elements of the claim(s) that must be proved to prevail on the claim(s);
- (3) a short and concise statement, in numbered paragraphs containing only one fact each, of the material facts as to which the moving party contends there is no genuine issue to be tried;
- (4) a statement or calculation of damages, if any; and
- (5) any and all citations of law in support of judgment as a matter of law, explaining the relevance of each citation.

**(b) Response and Memorandum in Opposition:** Papers opposing a motion for summary judgment must include:

- (1) any competing statements concerning the burden of proof, including burden shifting, together with legal authority supporting such statements;
- (2) any defenses to the elements of the claim(s) that must be proved to defeat such claim(s);
- (3) a short and concise statement of agreement or opposition, in numbered paragraphs corresponding to those of the moving party, of the material facts as to which it is contended there is a genuine issue to be tried;
- (4) a short and concise statement, in numbered paragraphs containing only one fact, of any additional facts as to which the opposing party contends are material and disputed,
- (5) a statement or calculation of damages, if any; and
- (6) any and all citations of law in opposition to judgment as a matter of law, with a parenthetical to explain the relevance of each citation.

**(c) Supporting Evidence:** Each statement by the movant or opponent pursuant to subdivisions (a) or (b) of this rule, including each statement controverting any statement of material fact by a movant or opponent, shall be followed by citation to admissible evidence either by reference to a specific paragraph number of an affidavit under penalty of perjury or fact contained in the record. Affidavits must be made on personal knowledge and by a person competent to testify to the facts stated, which are admissible in evidence. Where facts referred to in an affidavit are contained in another document, such as a deposition, interrogatory answer, or admission, a copy of the relevant excerpt from the document must be attached with the relevant passages marked or highlighted.

**(d) Admission of Facts:** Each numbered paragraph in the statement of material facts served by the moving party shall be deemed admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement served by the opposing party.

**(e) Responsive Pleadings:** Unless otherwise ordered by the court, a response to a motion for summary judgment must be filed and served no later than fourteen (14) days from the date of service of the motion. Replies of any kind may only be filed as provided in the pretrial order or upon leave of court.

**(f) Compliance with Federal Rules:** The statements required by this L.B.R. are in addition to the material otherwise required by these rules and the applicable Federal Rules of Bankruptcy Procedure.

**(g) Non-Compliance:** Non-compliance with this L.B.R. is grounds for denial of the motion at the court's discretion.

**Commentary**



**LOCAL BANKRUPTCY RULE 7069-1.  
PAYMENT OF JUDGMENT**

(a) **Forms:** Except as otherwise directed by the judge, parties must use the applicable forms approved by the State of Colorado for use in Colorado courts whenever a provisional remedy is sought or a judgment is enforced in accordance with state law as provided in FED. R. BANKR. P. 7064 and 7069. The caption must conform to Bankruptcy Official Form 16B rather than the form of caption used in the Colorado courts.

(b) **Discovery in Aid of Enforcement of Judgments:** A judgment creditor may not use FED. R. BANKR. P. 2004 to collect information for use in enforcing a judgment.

**Commentary**

[Source: C.D. Cal.]

**LOCAL BANKRUPTCY RULE 8001-1.  
NOTICE OF APPEALS**

(a) **Appeals Filed with the Bankruptcy Court:** An original notice of appeal in substantial conformity with Bankruptcy Official Form 17 must be filed with the Clerk.

(b) **Electronic Filing:** L.B.R. 5005-4 applies to appeals and therefore appeals are not exempt from the electronic filing procedure. Mandatory electronic filers must file appeals from bankruptcy court orders and all appellate related documents required to be filed with this court through the ECF system. Appellate related documents required to be filed with the appellate court must be filed in accordance with the practice of that court.

(c) **Filing Fees:** Parties must submit the appropriate filing fee to the bankruptcy court.

**Commentary**

[Source: COB LBR 801]

Parties are advised to become familiar with the local rules of the court before which their appeal is filed. Once the appeal is docketed by the appellate court, additional papers must be filed with the appropriate appellate court.

**LOCAL BANKRUPTCY RULE 8001-3.  
ELECTION FOR DISTRICT COURT DETERMINATION OF APPEAL**

**(a) U.S. District Court Election:**

(1) *Appellant:* If appellant elects to have the appeal heard in the district court pursuant to 28 U.S.C. § 158(c)(1) that fact must be stated clearly in a separate pleading which must be filed at the same time as the notice of appeal.

(2) *Any Other Party:* Any other party may elect to have the appeal heard by the district court not later than 30 days after service of the notice of the appeal by filing a notice of election with the Bankruptcy Appellate Panel.

(b) **Cross-Appeals:** Each party filing a notice of appeal electing to have its appeal heard in the district court pursuant to 28 U.S.C. § 158(c)(1) must state that fact clearly in a separate pleading which must be filed at the same time as the notice of appeal.

**Commentary**

[Source: OKEB LBR 8001-3]

In the event of a cross-appeal, if the cross-appellant does not make an election, the cross-appeal will be sent to the BAP regardless of where the original appeal is being heard.

See Bankruptcy Appellate Panel Local Rule 8001-1.

**LOCAL BANKRUPTCY RULE 8004-1.  
SERVICE OF NOTICE OF APPEAL**

(a) **Appeal Service List:** In order to comply with FED. R. BANKR. P. 8004, immediately upon the filing of a notice of appeal or motion for leave to appeal an interlocutory order, the Clerk will create and file an appeal service list.

(b) **Service:** In addition to the provisions of FED. R. BANKR. P. 8004, the Clerk will serve the following upon the parties specified in the appeal service list:

(1) *Appeal as of Right:* In the case of a notice of appeal pursuant to FED. R. BANKR. P. 8001(a):

(A) copies of the docket bearing the title and document number, if applicable, of all documents recorded within the case which relate to the cause of action and order being appealed;

(B) a transcript order form;

(C) an instruction sheet which is included as an exhibit to the Clerk's notice; and

(D) a copy of the appeal service list.

(2) *Appeal by Leave:* In the case of a motion for leave to appeal an interlocutory order pursuant to FED. R. BANKR. P. 8001(b), in addition to the notice of appeal:

(A) an instruction sheet; and

(B) a copy of the appeal service list.

**Commentary**

[Source: COB LBR 804]

**LOCAL BANKRUPTCY RULE 8006-1.  
DESIGNATION OF RECORD - APPEAL**

**Designation of Record on Appeal:** The provisions of FED. R. BANKR. P. 8006 govern the designation of the record on appeal. Supplemental designations of record will not be allowed except upon motion with notice to opposing parties and counsel, and only by order of the court.

**Commentary**

[Source: COB LBR 806]

**LOCAL BANKRUPTCY RULE 8007-1.  
COMPLETION OF RECORD - APPEAL**

**Notice of Transcript Request:** If a party has requested that a transcript be prepared by a transcription service, that party must notify the Clerk by filing a Notice of Transcript Request, including the anticipated arrival date of the transcript, concurrently with the filing of the designation of record. Upon the filing of a notice of appeal, the Clerk will notify the appellate court of its filing, which constitutes transmission of the record on appeal.

**Commentary**

[Source: COB LBR 807]

See also L.B.F. 8007-1.1 for Notice of Transcript Request and 8007-1.2 for Acknowledgment of Transcript Request by Transcriber.

**LOCAL BANKRUPTCY RULE 8008-1.  
FILING PAPERS - APPEAL**

**Service:** Parties to an appeal must comply with the service provisions of FED. R. BANKR. P. 8008(b) by serving copies of all papers filed upon all persons on the appeal service list prepared under L.B.R. 8004-1(a).

Commentary

[Source: COB LBR 808]

**LOCAL BANKRUPTCY RULE 9001-1.  
DEFINITIONS**

(a) In these rules the following definitions apply in addition to the definitions in section 101 of title 11 of the United States Code, and FED. R. BANKR. P. 9001:

(1) "certificate of service" means a statement specifically identifying who was served, at what address(es), when they were served and the method of service.

(2) "Clerk" means Clerk of the Bankruptcy Court or such appointed deputies.

(3) "CM/ECF" means Case Management/Electronic Case Filing.

(4) "Creditor Address Mailing Matrix" means a list of all creditors and parties in interest in the case as provided by the debtor as updated, maintained and stored by the court and accessible as described in L.B.R. 1007-2 and L.B.R. 1007-2App.

(5) "days" means "calendar days," unless otherwise specified as "court days." FED. R. BANKR. PRO. 9006(a)'s time computation rules are not superseded by these L.B.R.

(6) "ECF Procedures" means electronic case filing procedures as provided, and updated, in (a) these L.B.R., (b) the L.B.R. Appendix, including the ECF Administrative Procedures at L.B.R. 5005-4App., and (3) the court's webpage.

(7) "Electronic Service" or "Electronic Notice" means documents sent via electronic mail with "Notice of Pleadings" in the subject line.

(8) "e-mail" means electronic mail.

(9) "meet and confer" means a conference between opposing parties initiated by the movant in an effort to resolve the dispute. If a conference has not taken place, the movant or respondent, or their counsel, must submit a statement describing the efforts made to accomplish the required meet and confer.

(10) "pro se" means a person who is not represented by an attorney.

(11) "verification" or "verified pleading" means an unsworn declaration as defined in 28 U.S.C. § 1746, including a statement in substantial conformity with the following: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

Commentary

[Source: New]

Meet and confer: The purpose of requiring a "meet and confer" is to assist the parties in resolving their disputes without the necessity and expense of court intervention. Therefore, facsimiles and electronic mail by themselves may not suffice. Despite advances in technology, human contact is often necessary for conflict resolution. Therefore, if a meet and confer is unsuccessful when done by e-mail, it may be necessary to communicate by telephone or in person.

**LOCAL BANKRUPTCY RULE 9004-1.  
PAPERS - REQUIREMENTS OF FORM**

(a) **Form of Documents Submitted to the Court:** All petitions, pleadings, and other documents filed or served in hard copy or electronically must be plainly and legibly typewritten on single sided paper, without being materially defaced by erasures, interlineations, or strikeouts. If the pleading must be handwritten, it must be printed legibly in blue or black ink. The use of abbreviations other than those approved by the current edition of The Blue Book Uniform System of Citation is prohibited.

(b) **Form of Paper Submissions:** For hard copy documents submitted to the court, the paper used must be standard weight, white, and approximately 8 1/2 by 11 inches in size. Unless otherwise specified in these L.B.R., the upper margin of each sheet must be not less



than 1/2 inch, the left-hand margin must be not less than one inch, the print size must be no smaller than 12 point font, and the pages must be fastened with a paperclip, not stapled, at the top-left without backs or covers.

**(c) Form of Documents Sent for Notice:** In the interest of conserving paper, documents sent for notice may use 10 point font and may be printed using "book style" (two pages of text on one side front and back of one piece of paper) so long as it is legible.

**(d) Page Limitations:** Page limits are set at the discretion of the court. Documents that are longer than twenty (20) pages must include a table of contents and a table of authorities.

**(e) Identifying Information:** All petitions, pleadings, and other documents must contain:

(1) *Attorneys:* the business address, telephone number, facsimile transmission (FAX) number and electronic mail (e-mail) address, if any, and attorney registration number of the attorney filing the document; or

(2) *Pro se (Unrepresented) Parties:* the home address, the mailing address (if different), telephone number and facsimile transmission (FAX) number, if any.

**(f) Attachments:** All documents that are exhibits or attachments to a pleading which is being electronically filed at the same time and by the same party must be electronically filed together under one docket number, e.g. the motion, supporting affidavit or other attachments and proposed order.

**(g) Copies Generally:** The court may, in any matter at any time, request that a copy of a document be submitted to the judge in paper format.

#### Commentary

[Source: L.B.R. 904]

See L.B.R. 5005-4, L.B.R. 9011-4, L.B.R. 9036-1 and L.B.R. 5005-4App. for additional information on electronic filing, registration and procedures.

Handwritten submissions are strongly discouraged. In the event that a party has no other options, the pleadings must be written in clear and legible print so that the court can easily review and convert the documents to electronic form as necessary.

### LOCAL BANKRUPTCY RULE 9004-2. CAPTION - PAPERS, GENERAL

**(a) Captions:** In addition to meeting the requirements of FED. R. BANKR. P. 1005 and Bankruptcy Official Form 16A, the official caption of all pleadings, documents, notices and orders must state:

(1) the full and correct first, middle, and last names of the debtor. If the debtor has no middle name or if he or she has only a middle initial, that fact must be indicated parenthetically in the caption. If the debtor's name has changed, it should be listed with the new name followed by "f.k.a." ("formerly known as") and the old name;

(2) the chapter of the Bankruptcy Code under which the case is filed;

(3) the debtor's federal employer identification number or the last four digits of the debtor's Social Security number or tax identification number (except that notices of the meeting of creditors that are mailed to creditors must include the debtor's full Social Security number); and

(4) the case number and judge's initials assigned to the proceeding.

**(b) Captions in Matters Concerning Relief from the Automatic Stay:** All motions, pleadings, and responses thereto filed pursuant to L.B.R. 4001-1 must bear a caption in substantial conformity with Bankruptcy Official Form 16D, except that the parties must be identified as Movant and Respondent rather than Plaintiff and Defendant. Separate case numbers will not be assigned to such motions.

**(c) Responses:** Any objection, reply or other responsive pleading must contain as part of its caption a verbatim recital of the title of the pleading to which the response is directed.

### Commentary

[Source: L.B.R. 105 and 904]

See L.B.R. 1007-5 for information on Social Security numbers and privacy.

## LOCAL BANKRUPTCY RULE 9009-1. FORMS

Forms designated by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and these L.B.R. must be in substantial conformity with the applicable Official Form, Director's Procedural Form or Local Bankruptcy Form. Orders issued by the court may vary from the form order depending on the circumstances of each case.

### Commentary

[Source: L.B.R. 909]

## LOCAL BANKRUPTCY RULE 9010-1. ATTORNEYS - NOTICE OF APPEARANCE

**(a) Attorneys Admitted to the U.S. District Court for the District of Colorado:** An attorney admitted and in good standing to practice in the U. S. District Court for the District of Colorado is qualified to practice in this bankruptcy court, subject to the following:

(1) *Address of Record:* The official address of record for an attorney appearing in a bankruptcy case or proceeding is the address appearing below the signature of said attorney on the petition, complaint, motion, pleading, entry of appearance, change of address or other paper most recently filed in the case or proceeding. This address will appear in the respective case or proceeding in the court's automated docket system database notwithstanding other addresses, if any, which may be of record on behalf of the attorney in other cases or proceedings in which the attorney has made an appearance.

(2) *Notice of Change of Address in Each Specific Case or Proceeding:* Attorneys must file and serve a separate notice of change of address in each pending case or proceeding in which the attorney has previously entered an appearance.

(3) *Local Counsel:* Regardless of whether an attorney is admitted to practice in Colorado or in the U.S. District Court for the District of Colorado, when an attorney is located outside of Colorado and does not have an office in Colorado, the court, in its sole discretion, may impose additional requirements for practice before the bankruptcy court, including that such out-of-state counsel retain local counsel qualified to practice before this court.

**(b) Attorneys Not Admitted to the U.S. District Court for the District of Colorado (Pro Hac Vice):** An attorney who is a member in good standing of the bar in any other state or of any other court of the United States, but not authorized to appear in this court, may, upon motion for admission to practice pro hac vice filed in the bankruptcy court, participate in the conduct of a particular case in this court. Such motions may be made in open court provided that papers are filed within three (3) court days of the hearing. The motion must 1) list all states and federal courts where the attorney is admitted, 2) provide any corresponding bar numbers from jurisdictions where the attorney is admitted and 3) affirm that the attorney is and remains in good standing with each bar listed. Unless otherwise ordered by the court, the motion will be allowed only if the attorney associates with an active member in good standing of the bar of the United States District Court for the District of Colorado, who maintains an office within the district and who will meaningfully participate in the case. The resident attorney must sign the first pleading filed and at least participate in the initial hearing on the matter or as otherwise ordered by the court. Any notice, pleading, or other paper may be served on the resident attorney with the same effect as if served on the non-resident attorney within the state.



(c) **Scope of Employment/Unbundling of Services:** See Administrative Order 2007-6 from the United States District Court for the District of Colorado, and any amendments thereto.

(d) **Disciplinary Matters:** The bankruptcy judges of this court may refer issues relating to professional responsibility or other disciplinary matters to the Disciplinary Panel or Committee on Conduct of the U. S. District Court for the District of Colorado or any other grievance committee of any bar or court of which the attorney in question may be a member.

(e) **Representation of a Corporation, Partnership, or Other Unincorporated Organization:** No corporation, partnership, or other unincorporated organization may file a petition under Title 11 of the United States Code, or otherwise appear in cases or proceedings before this court, unless it is represented by an attorney authorized to practice in this court. Where a corporate debtor is involved, the attorney representing such an entity must sign the petition and pleadings.

(f) **Entry of Appearance:** Attorneys who enter appearances in a case will be placed on the Creditor Address Mailing Matrix for the case as a party in interest and will receive only copies of notices, orders, and other documents to which parties in interest may be entitled pursuant to FED. R. BANKR. P. 2002 or these L.B.R. In order to receive all documents, counsel must also file a request for all notices.

#### Commentary

[Source: L.B.R. 910]

See D.C.Colo.LCivR 83.3, The Bar Of The Court.

See also U. S. District Court Administrative Order 2007-6, In the Matter of Rules of Professional Conduct.

### LOCAL BANKRUPTCY RULE 9010-3. SUPERVISED LAW STUDENTS

#### (a) Generally:

(1) With the approval of the bankruptcy judge to whom a bankruptcy case or adversary proceeding has been assigned, an eligible law student who is engaged in a law school clinical program may, under the supervision of an attorney admitted to practice in this court, appear in that matter on behalf of any party who has consented in writing.

(2) Unless otherwise limited, such appearance authorizes the student to appear in a matter in court or other related proceedings when accompanied by the supervising attorney and to prepare and sign court papers which are also signed by the supervising attorney.

#### (b) Student Eligibility: To be eligible, the student must:

(1) be enrolled in a law school accredited by the American Bar Association or, following graduation, be preparing to take a written bar examination or awaiting admission to the Bar following that examination;

(2) be enrolled in, or have successfully completed a law school clinical program;

(3) have completed two full semesters of law school, including a course in evidence;

(4) be certified by the law school dean (or the dean's designee) as qualified to provide the legal representation permitted by this rule. This certification may be withdrawn by the certifier at any time by mailing notice to the court;

(5) be introduced to the court by the supervising attorney;

(6) not receive compensation of any kind from the client. This shall not affect the ability or right of an attorney or law school clinical program to seek attorney fees which may include compensation for student services; and

(7) certify in writing that he/she is familiar with the FED. R. CIV. P., Federal Rules of Evidence, FED. R. BANKR. P. and this court's L.B.R. and website ([www.cob.uscourts.gov](http://www.cob.uscourts.gov)).



(c) **Supervising Attorney:** The attorney supervising a student must:

- (1) be a member in good standing of the bar of this court;
- (2) supervise students in a clinical program of an eligible law school;
- (3) maintain appropriate professional liability insurance for the supervising attorney and eligible students;
- (4) introduce the student to the court;
- (5) assume professional responsibility for the student's work;
- (6) be present whenever the student appears;
- (7) sign all pleadings; and
- (8) file a written agreement to supervise a student in accordance with this L.B.R..

(d) **Admission Procedure:**

(1) The student, dean (or designee), supervising attorney and the client must complete the Law Student Appearance form, L.B. Form 9010-3.1, as found on the court's website which must be filed with the Clerk.

(2) The student's appearance is not authorized until approved by the bankruptcy judge, which approval may be withheld or withdrawn for any reason without notice or hearing.

### Commentary

[Source: GPO 2005-3 which is an adoption of General Order 2005-3 of the U.S. District Court for the District of Colorado.]

## LOCAL BANKRUPTCY RULE 9010-4. ATTORNEYS - WITHDRAWAL

(a) **Withdrawal of Appearance:** An attorney who has appeared in a case or proceeding may seek to withdraw on motion showing good cause. Withdrawal is only effective upon court order after proper service of the motion and notice. A motion to withdraw must state the reasons for withdrawal unless the statement would violate the Rules of Professional Conduct. This L.B.R. also applies to substitute counsel.

(b) **Notice Requirements for Withdrawal:** Any attorney requesting to withdraw as counsel for a client must make a reasonable effort to give actual notice to the client and file a motion pursuant to L.B.R. 9013-1 including the following:

- (1) the attorney wishes to withdraw;
- (2) the court retains jurisdiction;
- (3) the client's last known address and telephone number;
- (4) the client has the burden of keeping the court informed of the mailing address where notices, pleadings or other papers may be served;
- (5) the client has the obligation either to prepare personally for any hearing or trial in a contested matter or adversary proceeding or to hire another attorney to prepare for any future hearing or trial;
- (6) the client is responsible for complying with all court orders and time limitations established by any applicable statute, rule, or L.B.R.
- (7) if another attorney is not hired, the client has the obligation to decide whether to respond to any motion that may be filed in the case after the withdrawal of counsel, to file a timely response, and to respond to any court orders requiring the client to respond;
- (8) if the client fails or refuses to meet these burdens, the client may suffer sanctions, including default or dismissal of the pending contested matter, adversary proceeding, or the client's bankruptcy case in some circumstances;
- (9) the dates of any pending matters and filing deadlines, including trials and hearings on contested matters or adversary proceedings, and a warning that such matters will not be delayed or affected by the withdrawal of counsel;
- (10) service of process may be made upon the client at the client's address in the court's database;

(11) where the withdrawing attorney's client is a corporation, partnership, or other legal entity, that such entity cannot appear without counsel admitted to practice before this court, and absent prompt appearance of substitute counsel, pleadings, motions and other papers may be stricken, and default judgment or other sanctions may be imposed against the entity including dismissal or conversion of its case if it is a debtor; and

(12) the client or other parties in interest have the right to object to the proposed withdrawal of counsel by filing with the court an objection to the attorney's motion to withdraw within fourteen (14) days after mailing of the notice.

(c) **Service:** The motion to withdraw and notice must be filed with the court and served on the client and all counsel of record.

#### Commentary

[Source: (1) L.B.R. 910, (2) U.S. District Court Rule 83.3.D. (3) C.R.C.P. Rule 121, Section 1-1]

### LOCAL BANKRUPTCY RULE 9011-4. SIGNATURES AND E-FILING

**Electronic Signature:** Any petition, schedule, statement, declaration, claim, order, opinion, judgment, notice, minutes of proceeding or other document filed and authorized or subscribed under any method (digital, electronic, scanned) will be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though manually signed or subscribed.

#### Commentary

[Source: GPO 2001-8, 4th Amended and N.B. Cal. 9011-1]

See L.B.R. 5005-4, L.B.R. 9004-1, L.B.R. 9036-1, L.B.R. 5005-4App and additional ECF Procedures on the court's webpage at [www.cob.uscourts.gov](http://www.cob.uscourts.gov).

### LOCAL BANKRUPTCY RULE 9013-1. MOTIONS PRACTICE

#### (a) Seeking Relief:

##### (1) *Motion, Application or Other Request for Relief:*

(A) *Documents to be Served:* When a statute, rule, or court order requires service of a motion or other pleading, service must include copies of the motion, including exhibits, notice and any proposed order.

(B) *Service of Documents:* Service of the documents in (a)(1)(A) must be made on those parties against whom relief is sought pursuant to FED. R. BANKR. P. 7004 and 9014, or as otherwise required by statute, rule or court order.

(C) *Proposed Orders:* All motions, applications or other requests for relief must be accompanied by a proposed order on a separate sheet of paper.

(2) *Notice:* When a statute, rule or court order requires "notice and a hearing" or other similar phrase, the following applies:

(A) *Form of Notice:* The movant must use the form of notice in substantial conformity with L.B. Form 9013-1.1. The notice must contain a specific statement describing the requested relief or intended action to be taken, in sufficient detail to meaningfully inform the parties receiving the notice.

(B) *Notice of Deadline to File an Objection and Request for Hearing:* The notice must state the specific date of the deadline to object and request a hearing, which must be a date on which the court is scheduled to be open for business, and not just the number of days within which to object. Unless otherwise ordered by the court, the objection deadline date must not be less than is prescribed in the



Code, FED. R. BANKR. P. or these L.B.R. If no deadline is so provided, then the notice period must not be less than fourteen (14) days from the mailing of the notice.

(C) *Notice to All*: For notice to all creditors and parties in interest see Creditor Address Mailing Matrix in L.B.R. 1007-2(c)App.

(3) *Certificate of Service*: Movant must use the form of certificate of service in substantial conformity with L.B. Form 9013-1.2.

**(b) Objections and Requests for Hearing**: Objections and requests for hearing must be filed with the court and a copy thereof must be served upon counsel for the movant (or movant, if unrepresented) on or before the objection deadline set forth in the notice. Objections and requests for hearing must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered. Failure of the responding party to timely file a written opposition may be deemed a waiver of any opposition to granting of the motion, the relief requested, or the action to be taken.

**(c) Certificates Requesting Court Action:**

(1) *Movant's Certificate of Non-Contested Matter*: In the event that no objection is filed or a stipulation has been reached, the movant should, not earlier than three (3) court days following the objection deadline set forth in the notice, file movant's Certificate of Non-Contested Matter and Request for Entry of Order, L.B. Form 9013-1.3. The Certificate of Non-Contested Matter must be verified by the movant, or movant's counsel, and include all information and docket numbers required by L.B. Form 9013-1.3.

(2) *Movant's Certificate of Contested Matter*: In the event that an objection is filed, the movant should, not earlier than three (3) court days following the date to object specified in the notice, file movant's Certificate of Contested Matter and Request for Hearing, L.B. Form 9013-1.4. The Certificate of Contested Matter must be verified by movant or movant's counsel and include all information and docket numbers required by L.B. Form 9013-1.4. A copy of the Certificate of Contested Matter must be served on each respondent.

(3) *Respondent's Certificate of Contested Matter*: Although the movant bears the burden of timely filing a Certificate of Contested Matter, the respondent may, not earlier than seven (7) days following the date to object specified in the notice, file respondent's Certificate of Contested Matter and Request for Hearing, L.B. Form 9013-1.4. The Certificate of Contested Matter must include all information and docket numbers required by L.B. Form 9013-1.4. A copy of the Certificate of Contested Matter must be served on the movant and any other respondent.

**(d) Hearing:**

(1) *Hearing*: Upon the filing of the Certificate of Contested Matter, the court will issue a notice of the date, time and place of the hearing. The notice will be served by the court to the movant and respondents at their addresses or their attorneys' addresses of record (either by U.S. mail or electronically) and to such other parties as the court may designate.

(2) *Evidentiary or Non-Evidentiary Hearing*: The notice of hearing will advise the parties whether the hearing will be an evidentiary or non-evidentiary hearing.

(3) *Expedited Hearing*: A motion for expedited hearing may be filed pursuant to FED. R. BANKR. P. 9006(c) and L.B.R. 2081-1. Such request must be filed as a separate motion.

**(e) Defective or Deficient Motion**: Failure to comply with the motion, notice and service requirements of the FED. R. BANKR. P. or these L.B.R. may result in the denial of your motion, application or other request for relief.

**(f) Non-Prosecuted Motions**: Any contested matter unresolved at the time the bankruptcy case is closed is moot and will be deemed denied for lack of prosecution. Any such denial is without prejudice.



### Commentary

[Source: L.B.R. 202 and new]

This process is strictly a mechanism for providing an opportunity to be heard without requiring the court to unnecessarily calendar all motions and applications for a hearing. Parties must read this L.B.R. in conjunction with other applicable Code sections and FED. R. BANKR. P. to address the questions of (1) whom to serve; (2) with what; (3) in what manner; and (4) the amount of time afforded to file an objection. Parties are advised to be mindful of the distinction between notice (as may be required by FED. R. BANKR. P. 2002 and other notice provisions) and service (as may be required by FED. R. BANKR. P. 9014 incorporating FED. R. BANKR. P. 7004).

See also L.B.R. 1007-2 and 2002-1 for more information on the Creditor Address Mailing Matrix.

Unless otherwise provided by these L.B.R. or order of the court, this rule does not apply:

(1) to any pleadings, motions, or notices in adversary proceedings under Part VII of the FED. R. BANKR. P.;

(2) to hearings set under 11 U.S.C. § 1125;

(3) to hearings on confirmation of a plan pursuant to chapter 9, 11, 12, or 13 when no objections have been filed; and

(4) as otherwise provided by these L.B.R. or the FED. R. BANKR. P.

The summary of issues in the Certificate of Contested Matter is intended to identify the nature of the pending dispute(s) and aid the court in setting the hearing time.

Movant should refer to L.B.R. 7007-1 for motions filed in an adversary proceeding.

### **LOCAL BANKRUPTCY RULE 9013-2. CERTIFICATE OF SERVICE - MOTIONS**

When a statute, rule or order requires a party to serve a pleading, the party must file a certificate of service specifically identifying who was served, when they were served and the method of service. The certificate of service should be filed with the pleading, but not later than three (3) court days of the filing of the pleading and must be in substantial conformity with L.B. Form 9013-1.2.

### Commentary

[Source: New]

See L.B.R. 9001-1 for definition of certificate of service.

See also L.B.R. 2081-2 for information on service and motions to limit notice in chapter 11 cases.

### **LOCAL BANKRUPTCY RULE 9014-1. CONTESTED MATTERS**

Unless otherwise provided for in the FED. R. BANKR. P., these L.B.R., or court order, the notice required under FED. R. BANKR. P. 9014 must be served with the motion pursuant to L.B.R. 9013-1 and in substantial conformity with L.B. Form 9013-1.1.

### Commentary

[Source: L.B.R. 914 and New. L.B.R. 9014-1 added on 5/29/08]

### **LOCAL BANKRUPTCY RULE 9019-2. ALTERNATIVE DISPUTE RESOLUTION**

(a) **Assignment of Matters to Mediation:** The court may refer a matter to mediation *sua sponte*, upon written stipulation by the parties to the matter, upon motion by a party to the matter, or upon motion by the United States Trustee. Participation by the parties in

mediation is ordinarily voluntary, however, the court in its discretion may order any party or party in interest to participate.

**(b) Matters Subject to Mediation:** Unless otherwise ordered by the court, all controversies arising in cases under title 11, U.S.C., adversary proceedings, contested matters and any other disputes in bankruptcy cases are eligible for referral to mediation.

**(c) Deadlines:** Unless otherwise ordered by the court, the referral of a matter to mediation does not operate to stay, postpone or extend any deadlines for taking any action required or allowed by law, court order or applicable rule.

**(d) Mediation/Administration:** Upon entry of a court order referring a matter to mediation, the parties must abide by all guidelines and requirements of the Faculty of Federal Advocates' Bankruptcy Mediation Program (the "Program"), if applicable. No later than fourteen (14) days after entry of the order referring the matter to mediation, the parties designated in the order must contact the Program Administrator to commence the mediation. Unless a party qualifies for pro bono mediation services under the Program, or unless the court orders otherwise, all mediator's fees and incidental costs of the mediation are to be paid by the parties pro rata (exclusive of the parties' respective attorneys' fees and costs), except as otherwise agreed by the parties or ordered by the court.

**(e) Confidentiality; Nondisclosure:**

(1) *Protection of Information:* Unless otherwise agreed by the parties or ordered by the court, all parties to the mediation and the mediator are prohibited from disclosing or producing in any manner, outside the context of the mediation, any oral or written information related to the mediation. Federal Rule of Evidence 408 governing compromises and offers to compromise, and any other applicable law relating to the privileged and confidential nature of settlement discussions, apply to the mediation. Notwithstanding the confidentiality of the mediation, information otherwise discoverable or admissible as evidence does not become exempt from discovery or inadmissible merely because it may be disclosed in and related to the mediation.

(2) *Discovery from Mediator:* The mediator shall not be compelled by the court, the parties or any person or entity to disclose or produce any written or oral information received or compiled while serving as a mediator in a matter. The mediator shall not testify or be compelled to testify concerning the mediation in any proceeding of any nature. Any party or entity demanding or seeking to compel the mediator to disclose or testify to matters subject to this L.B.R. are liable to the mediator for the mediator's reasonable costs and attorneys' fees in resisting such demands.

**(f) Report of Mediation:** As soon as practicable after the conclusion of the mediation, the mediator must file with the court a Report of Mediation, advising only:

- (1) the date(s) that the parties conducted the mediation;
- (2) the parties in attendance at the mediation; and
- (3) whether the parties resolved the matter.

No other information must be disclosed in the Report of Mediation.

**(g) Termination of Mediation:** The mediation will terminate upon the earlier of:

- (1) the filing of the mediator's Report of Mediation; or
- (2) entry of a court order withdrawing the referral of the matter to mediation.

**(h) Noncompliance; Sanctions:** A party's failure to comply with the provisions of this L.B.R. may result in the imposition of appropriate sanctions by the court against such party, or counsel for such party, or both.

### Commentary

[Source: L.B.R. 919 and Faculty of Federal Advocates]

Litigation in bankruptcy cases frequently imposes economic burdens on parties and may delay the resolution of disputes. Alternative dispute resolution, including mediation, often reduces the costs and associated burdens of litigating disputed issues in bankruptcy cases and facilitates settlements. The purpose of this L.B.R. is to allow parties a means of submitting disputed issues in bankruptcy cases, including contested matters and adversary proceedings, to mediation. Mediation as contemplated by this L.B.R. is not administered by the court, but the parties and mediators remain subject to court supervision and all

applicable rules and court orders in the case. Mediation is just one form of alternative dispute resolution and the decision to engage in, or refrain from mediation does not preclude any other form of alternative dispute resolution to which the parties in a case may agree.

**LOCAL BANKRUPTCY RULE 9023-1.  
SERVICE OF MOTION TO ALTER OR AMEND JUDGMENT**

Service of a motion to alter or amend a judgment filed pursuant to FED. R. BANKR. P. 9023 must be on all parties to whom the judgment and final order was mailed pursuant to FED. R. BANKR. P. 9022(a). Responses are due within fourteen (14) days of service of the motion.

**Commentary**

[Source: L.B.R. 923]

**LOCAL BANKRUPTCY RULE 9024-1.  
SERVICE OF MOTION FOR RELIEF FROM JUDGMENT OR ORDER**

Service of a motion for relief from judgment or order filed pursuant to FED. R. BANKR. P. 9024 must be on all parties to whom the judgment and final order was mailed pursuant to FED. R. BANKR. P. 9022(a). Responses are due within fourteen (14) days of service of the motion.

**Commentary**

[Source: New]

**LOCAL BANKRUPTCY RULE 9025-1.  
BONDS**

(a) A party, the spouse of a party, or an attorney in a case will not be accepted as a personal surety on any bond filed in that case.

(b) Where the surety on a bond is a surety company approved by the United States Department of Treasury, a power of attorney showing the authority of the agent signing the bond must be on file with the Clerk.

**Commentary**

[Source: L.B.R. 925]

See the website for the United States Department of Treasury at [www.ustreas.gov](http://www.ustreas.gov) for a list of approved companies.

**LOCAL BANKRUPTCY RULE 9027-1.  
SERVICE OF NOTICE OF REMOVAL**

(a) A notice of removal must be filed with the bankruptcy court.

(b) A notice of removal served pursuant to FED. R. BANKR. P. 9027(b) must be served on all parties to the removed action and a certificate of service with all of the names and addresses of the parties to the removed action must be attached to the notice of removal filed with the court.

**Commentary**

D.C.COLO.LCivR 84.1 provides for the automatic referral of all proceedings arising under Title 11, United States Code or arising in or related to cases under Title 11.



**LOCAL BANKRUPTCY RULE 9029-1.**  
**LOCAL BANKRUPTCY RULES AND PROCEDURES**

**Modification of Rules and Procedures:** Any of these L.B.R., Standing Orders or General Procedure Orders may, for good and compelling cause shown, be subject to such modification as may be necessary to meet a bona fide emergency, to avoid irreparable injury or harm, or as may otherwise be necessary to do substantial justice and promote appropriate case administration.

**Commentary**

[Source: L.B.R. 929]

**LOCAL BANKRUPTCY RULE 9036-1.**  
**NOTICE BY ELECTRONIC TRANSMISSION**

**(a) Registration Constitutes Waiver of Service/Notice by Traditional Methods From the Court:** The request for and receipt of an electronic filing password from the court constitutes a request for electronic service pursuant to FED. R. BANKR. P. 9036 of all notices, orders, decrees and judgments *issued by the court*, and except as otherwise provided in the ECF Administrative Procedures, a waiver of the right to receive notice and service *from the court by mail*. Electronic filers will receive electronic notification of notices, orders, decrees and judgments in cases where they enter their appearance. Registration does not constitute waiver of the right to personal service or service by first class mail from other parties in the case. Registration does not constitute consent to electronic service otice from other parties in the case.

**(b) Case Specific Consent to Electronic Service/Notice From Other Parties:** An electronic filer may file a specific waiver of the right to personal service or first class mail and consent to electronic service otice from other parties in each case pursuant to FED. R. BANK. P. 9036. Whenever service is required to be made on a person who has filed a case specific waiver/consent, service and notice must be accomplished by electronic mail to the e-mail address on file with the court. Any notice sent via e-mail from a party other than the court must contain "Notice of Pleadings" in the subject or "re" line. The certificate of service must contain the email addresses and name(s) of the person(s) to whom electronic service was affected.

**Commentary**

[Source: GPO 2001-8, attachment II.C.]

See L.B.R. 5005-4, L.B.R. 9011-4, L.B.R. 5005-4App and additional ECF Procedures on the court's webpage at [www.cob.uscourts.gov](http://www.cob.uscourts.gov).

Those parties who are registered electronic filers are not entitled to and will not receive hard copies from the court.

The electronic case filing system automatically generates a "Notice of Electronic Filing" at the time a document is filed with the system. The notice indicates the time of filing, the name of the party and electronic filer filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the notice by e-mail to retrieve the document automatically. The system automatically sends this notice to all electronic filers participating in the case.

See FED. R. CIV. P. 5(b)(2)(E) and FED. R. BANKR. P. 7005 for electronic service in adversary proceedings.

**LOCAL BANKRUPTCY RULE 9070-1.**  
**WITNESSES & EXHIBITS**

**(a) Witnesses and Exhibits:** Unless otherwise set forth in a notice of hearing or trial or otherwise ordered by the court, the following requirements regarding witnesses and exhibits apply in all evidentiary hearings and adversary proceedings.

(1) *Filing Requirement:*

(A) *List of Witnesses and Exhibits:* Parties intending to introduce evidence at any contested hearing must file a list of witnesses and exhibits no later than three (3) court days prior to the hearing. Any list of witnesses and exhibits must be in substantial conformity with L.B. Form 9070-1.1.

(B) *Exhibits:* Copies of the exhibits must be exchanged with opposing counsel, but not filed with the court, no later than three (3) court days prior to the hearing.

(2) *Hearing Requirements:*

(A) *List of Witnesses and Exhibits:* Parties must provide three (3) copies of the witness and exhibit lists to the Law Clerk or Courtroom Deputy and one (1) copy to each opposing counsel or party.

(B) *Exhibits and Exhibit Notebooks:* Parties must provide the original plus two (2) copies of the exhibits intended to be offered at the hearing to the Law Clerk or Courtroom Deputy and one (1) copy to each opposing counsel or party. Parties granted permission to appear by telephone must file such documents. Original exhibits are to be used by the witnesses. Each exhibit must be individually marked for identification prior to the trial or hearing. Multi-page exhibits must be individually paginated unnumbered for ease of reference. Exhibits should be placed in a binder and indexed substantially in the form of L.B. Form 9070-1.1.

(C) *Marking of Exhibits:* Exhibits must be marked for identification as follows:

(i) *Plaintiff, Movant or Claimant:* numbers (1, 2, 3...)

(ii) *Defendant, Respondent or Objector:* letters (A, B, C...Y, Z, AA, BB, ... YY, ZZ, AAA, etc.)

(iii) In the event there are multiple plaintiffs, movants, defendants, or objectors, designate exhibits by party name as well as by numbers or letters.

(3) *Post-Hearing Requirements:* Upon the conclusion of a trial or hearing, counsel for the parties must retain custody of their respective original exhibits and deposition transcripts until such time as all need for the exhibits and deposition transcripts has terminated and the time for appeal has expired, or all appellate proceedings have been terminated, plus 60 days. In the event an appeal is filed, counsel must provide their exhibits pursuant to the appellate court's discretion to enable the Clerk to comply with the requirements of L.B.R. 8006-1.

[Amended, effective March 8, 2012.]

**Commentary**

[Source: New]

See L.B.R. 5007-1, Transcripts.





**UNITED STATES  
BANKRUPTCY COURT  
DISTRICT OF COLORADO**

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LOCAL  
BANKRUPTCY  
FORMS

December 1, 2009

UNITED STATES  
BANKRUPTCY COURT  
DISTRICT OF COLUMBIA

IN RE

AMERICAN

SALES

Debtor

## FORMS

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### Form

1002-1.1.	COVER SHEET FOR PETITION
1007-2.1.	VERIFICATION OF CREDITOR ADDRESS MAILING MATRIX
1007-4.1.	CORPORATE OWNERSHIP STATEMENT
1007-4.2.	LIST OF EQUITY SECURITY HOLDERS
1007-6.1.	STATEMENT UNDER PENALTY OF PERJURY CONCERNING PAYMENT ADVICES
1007-7.1.	DISCLOSURE REGARDING RECEIVERS
1009-1.1.	NOTICE OF AMENDMENT OF SCHEDULE OF DEBTS AND/OR ADDITION OF CREDITOR
1015-1.1.	ORDER GRANTING MOTION FOR JOINT ADMINISTRATION
1017-2.1.	MOTION TO DISMISS FOR DEBTOR'S FAILURE TO PROVIDE TAX RETURN PURSUANT TO 11 U.S.C. § 521(E)(2) AND NOTICE OF PENDING DISMISSAL OF CASE
1017-3.1.	ORDER DISMISSING CHAPTER 13 CASE PRIOR TO CONFIRMATION OF PLAN
1017-3.2.	ORDER DISMISSING CHAPTER 13 CASE AFTER CONFIRMATION OF PLAN
2016-1.1.	COVER SHEET FOR APPLICATION FOR PROFESSIONAL COMPENSATION
2016-3.1.	CHAPTER 13 SHORT FORM FEE APPLICATION
2016-3.2.	CHAPTER 13 LONG FORM FEE APPLICATION
2016-3.3.	NOTICE OF CHAPTER 13 FEE APPLICATION
2016-3.4.	ORDER ALLOWING AND APPROVING FEES
2081-1.1.	COVERSHEET FOR MOTION SEEKING EXPEDITED ENTRY OF ORDER(S) AND NOTICE OF IMPENDING HEARINGS THEREON
2081-1.2.	NOTICE OF FILING OF CHAPTER 11 DEBTOR'S MOTION SEEKING EXPEDITED ENTRY OF ORDER(S)
2081-1.3.	RESPONSE AND REQUEST FOR NOTICE OF HEARING
2081-1.4.	NOTICE OF TIME AND PLACE OF HEARING ON DEBTOR'S MOTION SEEKING EXPEDITED ENTRY OF ORDERS
2082-1.1.	MOTION TO CONFIRM CHAPTER 12 PLAN
2082-1.2.	ORDER GRANTING MOTION TO CONFIRM AND CONFIRMING CHAPTER 12 PLAN
2082-1.3.	NOTICE OF HEARING AND THE RIGHT TO OBJECT TO CHAPTER 12 PLAN
3003-1.1.	ORDER ESTABLISHING BAR DATE FOR THE FILING OF PROOFS OF CLAIM PURSUANT TO FED.R.BANKR.P. 3003(C)(3)
3003-1.2.	NOTICE OF ORDER ESTABLISHING PROCEDURES AND BAR DATE FOR THE FILING OF PROOFS OF CLAIM PURSUANT TO FED.R.BANKR. 3003(C)(3)
3003-1.3.	NOTICE OF ORDER ESTABLISHING PROCEDURES AND BAR DATE FOR THE FILING OF PROOFS OF CLAIM PURSUANT TO FED.R.BANKR.P. 3003(C)(3)
3003-1.4.	ORDER SETTING BAR DATE FOR FILING MOTIONS FOR ALLOWANCE OF CHAPTER 11 ADMINISTRATIVE EXPENSE CLAIMS
3004-1.1.	NOTICE OF FILING PROOF OF CLAIM
3012-1.1.	ORDER GRANTING MOTION FOR VALUATION OF COLLATERAL AND DETERMINATION OF SECURED STATUS



- 3015-1.1. CHAPTER 13 PLAN INCLUDING VALUATION OF COLLATERAL AND CLASSIFICATION OF CLAIMS
- 3015-1.2. NOTICE OF FILING OF CHAPTER 13 PLAN, DEADLINE FOR FILING OBJECTIONS THERETO, AND HEARING ON CONFIRMATION
- 3015-1.3. NOTICE OF CONTINUED DATES FOR MEETING OF CREDITORS AND HEARING ON CONFIRMATION OF PLAN
- 3015-1.4. VERIFICATION OF CONFIRMABLE PLAN
- 3015-1.5. CERTIFICATE AND MOTION TO DETERMINE NOTICE
- 3015-1.6. NOTICE OF FILING AMENDED CHAPTER 13 PLAN PRIOR TO HEARING ON CONFIRMATION AND DEADLINE FOR FILING OBJECTIONS THERETO
- 3015-1.7. NOTICE OF FILING AMENDED CHAPTER 13 PLAN AND DEADLINE FOR FILING OBJECTIONS THERETO
- 3015-1.8. NOTICE OF FILING AMENDED CHAPTER 13 PLAN, DEADLINE FOR FILING OBJECTIONS AND HEARING ON CONFIRMATION
- 3015-1.9. CHAPTER 13 CONFIRMATION ORDER
- 3015-1.10. ORDER MONDIFYING CONFIRMED CHAPTER 13 PLAN
- 3015-1.11. CHAPTER 13 DEBTOR'S CERTIFICATION TO OBTAIN DISCHARGE
- 3015-1.12. ORDER ON CHAPTER 13 DEBTOR'S CERTIFICATION TO OBTAIN DISCHARGE
- 3017-1.1. ORDER RE: SMALL BUSINESS PLAN AND DISCLOSURE STATEMENT AND NOTICE OF DEADLINES
- 3017-2.1. ORDER RE: SMALL BUSINESS PLAN WITHOUT SEPARATE DISCLOSURE STATEMENT AND NOTICE OF DEADLINES
- 3022-1.1. CHAPTER 11 FINAL REPORT AND MOTION FOR FINAL DECREE
- 3022-1.2. CHAPTER 11 FINAL REPORT AND MOTION FOR FINAL DECREE
- 3022-1.3. FINAL DECREE
- 3022-1.4. FINAL DECREE
- 4001-1.1. NOTICE OF MOTION FOR RELIEF FROM STAY AND OPPORTUNITY FOR HEARING PURSUANT TO 11 U.S.C. § 362(D)
- 4001-1.2. MOVANT'S CERTIFICATE OF NON-CONTESTED MATTER AND REQUEST FOR ENTRY OF ORDER (RE: MOTION FOR RELIEF FROM STAY)
- 4001-1.3. ORDER ON MOTION FOR RELIEF FROM STAY
- 4001-2.1. NOTICE OF MOTION REGARDING TERMINATION, ABSENCE, OR EXTENSION OF AUTOMATIC STAY
- 4001-2.2. ORDER CONFIRMING TERMINATION OR ABSENCE OF STAY
- 4008-1.1. COVER SHEET FOR REAFFIRMATION AGREEMENT
- 4008-1.2. CREDITOR DECLARATION REGARDING THE REAFFIRMATION AGREEMENT
- 7041.1. NOTICE OF MOTION TO DISMISS PROCEEDING TO DENY OR REVOKE DISCHARGE
- 8007-1. TRANSCRIPT REQUEST
- 8007-1.2. ACKNOWLEDGMENT OF TRANSCRIPT REQUEST BY TRANSCRIBER
- 9010-3.1. LAW STUDENT APPEARANCE
- 9013-1.1. NOTICE OF (TITLE OF MOTION/APPLICATION)
- 9013-1.2. CERTIFICATE OF SERVICE
- 9013-1.3. MOVANT'S CERTIFICATE OF NON-CONTESTED MATTER AND REQUEST FOR ENTRY OF ORDER

- 9013-1.4. CERTIFICATE OF CONTESTED MATTER AND REQUEST FOR HEARING
- 9070-1.1. LIST OF WITNESSES AND EXHIBITS





**Local Bankruptcy Form 1002-1.1.****COVER SHEET FOR PETITION.****CHECK APPLICABLE BOXES TO SHOW ALL DOCUMENTS ATTACHED**

Name of debtor(s):	<input type="checkbox"/> Attorney (firm name, address; telephone, and registration number):
	<input type="checkbox"/> No attorney ("pro se")(home address, telephone):

<b>Filing fee:</b>
<input type="checkbox"/> \$299 for chapter 7
<input type="checkbox"/> \$1,039 for chapter 11
<input type="checkbox"/> \$239 for chapter 12
<input type="checkbox"/> \$274 for chapter 13
<input type="checkbox"/> Other fee paid: \$_____. Enter amount AND attach applicable application under Fed. R. Bankr. P. 1006 to pay in installments or pursuant to 28 U.S.C. § 1930(f) (if applicable).

<b>Individual and business debtor(s) (except as otherwise noted):</b>
<input type="checkbox"/> Exhibit D Statement of Compliance with Credit Counseling Requirement for each individual debtor (a list of all authorized Credit Counselors for Colorado is found at <a href="http://www.usdoj.gov/ust">http://www.usdoj.gov/ust</a> or the court has a list that may be viewed in the Records/Public Information Room 114 of the court.)
<input type="checkbox"/> Voluntary Petition – Official Form 1
<input type="checkbox"/> Statement of Financial Affairs – Official Form 7
<input type="checkbox"/> Summary of Schedules A–J – Official Form 6–Summary
<input type="checkbox"/> Schedules A, B, C, D, E, F, G, H, I, and J – Official Forms 6A, 6B, 6C, 6D, 6E, 6F, 6land 6J
<input type="checkbox"/> Declaration Concerning Debtor's Schedules – Official Form 6–Declaration
<input type="checkbox"/> Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer – Official Form 19 (submitted only if debtor used the services of a bankruptcy petition preparer)
<input type="checkbox"/> For each individual debtor, copies of all payment advices, paycheck stubs, or other evidence of all salary, commissions or income received within 60 days before the bankruptcy case was filed, copied on 8 1/2 by 11 paper with the debtor's first and last name printed on top of each page (and bankruptcy case number, if a number has been assigned); OR, as applicable, complete L.B. Form 1007-6.1 ("Statement Under Penalty of Perjury Concerning Payment Advices") for each debtor.
<input type="checkbox"/> A record of any interest in an education individual retirement account ("IRA") (26 U.S.C. § 530(b)(1)) or qualified state tuition program (26 U.S.C. § 529(b)(1) plans).
<input type="checkbox"/> Attorney Fee Disclosure Statement – Director's Procedural Form B 203
<input type="checkbox"/> Verification of Creditors' Matrix – L.B. Form 1007-2.1
<input type="checkbox"/> Creditors' Matrix (see L.B.R. 1007-2 and L.B.R. 1007-2App. for instructions).

<b>Additional items due from ALL individual debtors:</b>
<input type="checkbox"/> Statement of Social Security Number(s) – Official Form 21
Chapter 7 individual debtors also must file:
<input type="checkbox"/> Statement of Current Monthly Income and Means Test Calculation – Official Form 22A*
<input type="checkbox"/> Statement of Intention – Official Form 8 (due thirty days post-petition) (the failure to comply with this statement and file reaffirmation agreements or motions to redeem personal property that the debtor does not intend to surrender has ramifications 45 days after the first scheduled meeting of creditors under 11 U.S.C. § 362(h) of the Bankruptcy Code)
Chapter 11 individual debtors also must file:
<input type="checkbox"/> Statement of Current Monthly Income – Official Form 22B
Chapter 13 individual debtors also must file:
<input type="checkbox"/> Statement of Current Monthly Income and Disposable Income Calculation – Official Form 22C*
<input type="checkbox"/> Plan – L.B. Form 3015.1

\*The links for the updated Internal Revenue Service and Census Bureau Information that may be needed to complete Statement of Current Monthly Income, Official Forms 22A and 22B, can be reached from the web site: <http://www.usdoj.gov/ust/>. (Not applicable in chapter 7 cases if debts are primarily business debts.)

<b>Additional items due from chapter 11 debtors:</b>
<input type="checkbox"/> List of Twenty Largest Creditors – Official Form 4
<input type="checkbox"/> Corporate Ownership Statement – Required by Fed. R. Bankr. P. 1007(a)(1) for corporations. L.B. Form 1007-4.1.
<input type="checkbox"/> List of Equity Interest Holders – Required by Fed. R. Bankr. P. 1007(a)(3) for corporations. L.B. Form 1007-4.2.
<input type="checkbox"/> Small business debtors must file the most recent 1) balance sheet, 2) statements of operations, 3) cash-flow statement and 4) federal income tax return; OR a verified statement that those documents do not exist and have not been prepared or filed.

Date:	Printed name of party signing:	Signature of attorney (or debtor without counsel):
-------	--------------------------------	--

Local Bankruptcy Form 1007-2.1.

VERIFICATION OF CREDITOR ADDRESS MAILING MATRIX

[Caption as in Bankruptcy Official Form 16A]

VERIFICATION OF CREDITOR ADDRESS MAILING MATRIX

The above named debtor hereby verifies under penalty of perjury that the attached Creditor Address Mailing Matrix (list of creditors) is true and correct to the best of my knowledge.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of debtor

\_\_\_\_\_  
Printed name of debtor

By: \_\_\_\_\_  
Signature of joint-debtor

\_\_\_\_\_  
Printed name of joint-debtor  
Home address  
Telephone number  
Facsimile number  
E-mail address

=====

Local Bankruptcy Form 1007-4.1.

CORPORATE OWNERSHIP STATEMENT

[Caption as in Bankruptcy Official Form 16A]

CORPORATE OWNERSHIP STATEMENT

In a case in which the debtor is a corporation (other than a governmental unit), or where any corporation is a party to an adversary proceeding (other than the debtor or a governmental unit), the following information is required pursuant to FED. R. BANKR. P. 1007(a)(1) and 7007.1 and L.B.R. 1007-4 and L.B.R. 7007.1-1:

Check applicable box:

[ ] There are no corporations that directly or indirectly own 10% or more of any class of the debtor's equity interest.

[ ] The following corporations directly or indirectly own 10% or more of a class of the debtor's equity interest:

- 1.
- 2.
- 3.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Signature of debtor

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address



Local Bankruptcy Form 1007-4.2.

LIST OF EQUITY SECURITY HOLDERS

[Caption as in Bankruptcy Official Form 16A]

LIST OF EQUITY SECURITY HOLDERS

In a chapter 11 reorganization case, the following information is required pursuant to FED. R. BANKR. P. 1007(a)(3) and L.B.R. 1007-4:

Check applicable box:

[ ] There are no equity security holders or corporations that directly or indirectly own 10% or more of any class of the debtor's equity interest.

[ ] The following are the debtor's equity security holders (list holders of each class, showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder):

- 1.
- 2.
- 3.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of debtor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
*Counsel to* \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

Local Bankruptcy Form 1007-6.1.

STATEMENT UNDER PENALTY OF PERJURY  
CONCERNING PAYMENT ADVICES

[Caption as in Bankruptcy Official Form 16A]

STATEMENT UNDER PENALTY OF PERJURY  
CONCERNING PAYMENT ADVICES

I\*, (debtor's name), state as follows:

I did not file with the court copies of some or all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition from any employer because:

Check applicable boxes:

☐ I was not employed during the period immediately preceding the filing of the above-referenced case, (insert the dates that you were not employed);

☐ I was employed during the period immediately preceding the filing of the above referenced case but did not receive any payment advices or other evidence of payment from my employer within 60 days before the date of the filing of the petition;

☐ I am self-employed and do not receive any evidence of payment from an employer;

☐ Other (please provide explanation):

I declare under penalty of perjury that the foregoing statement is true and correct.

Dated:

By:   
Signature of debtor

Printed name of debtor  
Home address  
Telephone number  
Facsimile number  
E-mail address

\* A separate form must be signed for each debtor.

**Local Bankruptcy Form 1007-7.1.****DISCLOSURE REGARDING RECEIVERS**

[Caption as in Bankruptcy Official Form 16A]

**DISCLOSURE REGARDING RECEIVERS**

In a chapter 11 reorganization case, the following information is required pursuant to L.B.R. 1007-7:

Check applicable boxes:

☐ No receiver is in possession of debtor's property☐ A receiver is in possession of all or part of the debtor's property:

Identification (by address or legal description) of property(ies): \_\_\_\_\_

Name of Creditor: \_\_\_\_\_

Name, Address and Telephone Number of Receiver:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney for Receiver (if any): \_\_\_\_\_

Name, Address and Telephone Number of Attorney:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Appointment of Receiver: \_\_\_\_\_

Court Appointing Receiver and Case No: \_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Signature of Debtor

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_

Attorney registration number

Business Address

Telephone number

Facsimile number

E-mail address

=====



Local Bankruptcy Form 1009-1.1.

NOTICE OF AMENDMENT OF SCHEDULE OF DEBTS  
AND/OR ADDITION OF CREDITOR

[Caption as in Bankruptcy Official Form 16A]

NOTICE OF AMENDMENT OF SCHEDULE OF DEBTS  
AND/OR ADDITION OF CREDITOR

You are hereby notified that the debtor has filed amended schedules of debt to include the creditor/party listed below or on the attachment.

1. Creditor/Party: \_\_\_\_\_ (name and address) \_\_\_\_\_.
2. Claim or Interest: \_\_\_\_\_ (amount owed, nature of claim, date incurred) \_\_\_\_\_.
3. This claim has been scheduled as (one box must be checked):  
☐ secured - Schedule D;  
☐ priority - Schedule E;  
☐ general unsecured - Schedule F;  
☐ executory contract or unexpired lease - Schedule G; or  
☐ co-debtor - Schedule H.
4. Trustee name and address, if one has been appointed: \_\_\_\_\_.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Counsel to* \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

Commentary

This notice must be completed for each creditor or party in interest added to the debtor's schedules. This notice must be served on each added creditor or party in interest and a certificate of service filed in conjunction therewith. If applicable, a proof of claim form must be included with the mailing. See L.B.R. 1009-1.

**Local Bankruptcy Form 1015-1.1.****ORDER GRANTING MOTION FOR JOINT ADMINISTRATION**

[Caption as in Bankruptcy Official Form 16A -  
combined for all jointly administered cases]

**ORDER GRANTING MOTION FOR JOINT ADMINISTRATION**

THIS MATTER comes before the court on the Motion for Joint Administration filed in Case No. \_\_\_\_\_ on \_\_\_\_\_ (month/day/year), by \_\_\_\_\_ (movant) (Docket # \_\_\_\_\_), seeking to jointly administer the above-captioned cases pursuant to FED. R. BANKR. P. 1015(b). The court, having reviewed the files,

ORDERS that the Motion for Joint Administration is hereby GRANTED and the above-captioned cases shall be jointly administered for procedural purposes only pursuant to FED. R. BANKR. P. 1015(b).

IT IS FURTHER ORDERED that the jointly administered cases are reassigned to the judge to whom the lower-numbered case (the "lead case") was assigned. The above-captioned cases shall be assigned and/or reassigned to the Honorable \_\_\_\_\_, Bankruptcy Judge, and shall bear the initials \_\_\_\_\_ following the case number. The Clerk of the Court shall adjust the assignment of cases accordingly.

IT IS FURTHER ORDERED that to effect joint administration, the following administrative procedures shall apply, but shall have no effect upon the substantive issues of the estate, either individually or collectively:

1. All motions, pleadings, and other documents filed in the jointly administered case shall bear a combined caption which includes the full name and number of each specific case as in Official Bankruptcy Form 16A, and must be filed, docketed and processed in the lead case, except for the following:

a. a motion which applies to less than all jointly administered debtors must clearly indicate in the caption and title to which debtor(s) the motion applies, but must still be filed in the lead case;

b. all proofs of claim must be filed in the specific case to which they apply;

c. monthly financial reports must be filed in the specific case to which they apply; and

d. amendments to schedules, statements, lists and other required documents in FED. R. BANKR. P. 1002 and 1007 must be filed in the specific case to which the amendments apply.

2. Debtors shall maintain adequate records regarding the assets of the respective Debtors' estates in order to protect the rights of joint creditors and separate creditors of these estates.

3. The Clerk of the Court (or other designated party) shall provide notice of the joint administration of the above-captioned cases to all creditors and interested parties identified in each case.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

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**Local Bankruptcy Form 1017-2.1.****MOTION TO DISMISS FOR DEBTOR'S FAILURE  
TO PROVIDE TAX RETURN PURSUANT TO 11 U.S.C. § 521(E)(2)  
AND NOTICE OF PENDING DISMISSAL OF CASE**

[Caption as in Bankruptcy Official Form 16B]

**MOTION TO DISMISS FOR DEBTOR'S FAILURE-TO PROVIDE TAX  
RETURN PURSUANT TO 11 U.S.C. § 521(E)(2) AND NOTICE OF PENDING  
DISMISSAL OF CASE**

TO THE DEBTOR AND THE ATTORNEY FOR THE DEBTOR:

          (name of creditor, trustee or other requesting party)          , hereby certifies that despite a timely request, if required, the debtor in the above-referenced case has failed to provide a copy of the federal income tax return or transcript of such return for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed, as required by 11 U.S.C. § 521(e)(2), FED. R. BANKR. P. 4002 and L.B.R. 1017-2;

NOTICE IS HEREBY GIVEN that, pursuant to L.B.R. 1017-2 and 11 U.S.C. § 521(e)(2), the case will be dismissed without further notice or hearing, unless the debtor files an objection with the court by           (month/day/year)           (insert the specific date that is 14 days from service of this motion and notice). The debtor's objection must include such information as is necessary to demonstrate that the debtor's failure to provide the tax return or transcript was due to circumstances beyond the control of the debtor, as required by 11 U.S.C. § 521(e)(2).

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Counsel to* \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

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**Local Bankruptcy Form 1017-3.1.****ORDER DISMISSING CHAPTER 13 CASE  
PRIOR TO CONFIRMATION OF PLAN**

[Caption as in Bankruptcy Official Form No. 16B]

**ORDER DISMISSING CHAPTER 13 CASE  
PRIOR TO CONFIRMATION OF PLAN**

THIS MATTER comes before the court on the \_\_\_\_\_ (name of pleading) \_\_\_\_\_, filed by \_\_\_\_\_ (name of movant) \_\_\_\_\_. Notice has been given to the debtor and debtor's counsel and the chapter 13 trustee as applicable. No timely objection has been filed. The court

**FINDS that:**

1. Cause exists for dismissal of this case pursuant to 11 U.S.C. § 1307.
2. No plan has been confirmed.
3. No request for delayed revestment of property of the estate has been made.

**IT IS THEREFORE ORDERED that:**

1. THIS CASE IS DISMISSED. The Clerk of the court must serve this order on all creditors and parties in interest within fourteen days (14) of the date of the order.
2. In accordance with 11 U.S.C. §§ 349(b)(1) and (2), any transfer avoided under 11 U.S.C. §§ 522, 544, 545, 547, 548, 549 or 724(a), or preserved under 11 U.S.C. §§ 510(c)(2), 522(i)(2) or 551, is reinstated; any lien voided under 11 U.S.C. § 506(d) is reinstated; and any order, judgment or transfer ordered under 11 U.S.C. §§ 522(i)(1), 542, 550 or 553 is vacated.
3. All property of the estate, except payments made by the debtor to the trustee, will revert in the debtor as of the date of this order pursuant to 11 U.S.C. § 349.
4. Payments made by the debtor will be retained by the trustee pending payment of claims allowed under 11 U.S.C. § 503(b) pursuant to 11 U.S.C. § 1326(a)(2).
  - a. Any request for allowance of an 11 U.S.C. § 503(b) claim must conform with 11 U.S.C. § 503 and FED. R. BANKR. P. Rules 9013, 9014 and 2002, and be filed after 14 days but within 21 days of the date of this order.
  - b. Within 30 days after determination of the last request, if any, for allowance of 11 U.S.C. § 503(b) claims, the trustee must pay all fees imposed by statute and all allowed 11 U.S.C. § 503(b) claims from the debtor's payments and return any surplus to the debtor.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

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Local Bankruptcy Form 1017-3.2.

ORDER DISMISSING CHAPTER 13 CASE  
AFTER CONFIRMATION OF PLAN

[Caption as in Bankruptcy Official Form No. 16B]

ORDER DISMISSING CHAPTER 13 CASE  
AFTER CONFIRMATION OF PLAN

THIS MATTER comes before the court on the \_\_\_\_\_ (name of pleading) \_\_\_\_\_, filed by \_\_\_\_\_ (name of movant) \_\_\_\_\_. Notice has been given to the debtor and debtor’s counsel and the chapter 13 trustee as applicable. No timely objection has been filed. The court

**FINDS** that:

- 1. Dismissal of this case is appropriate pursuant to 11 U.S.C. § 1307(c).
- 2. A plan has been confirmed.
- 3. No request for delayed revestment of property of the estate has been made.

**IT IS THEREFORE ORDERED** that:

- 1. **THIS CASE IS DISMISSED.** The Clerk of the court must serve this order on all creditors and parties in interest within fourteen (14) days.
- 2. In accordance with 11 U.S.C. § 349(b)(1) and (2), any transfer avoided under 11 U.S.C. §§ 522, 544, 545, 547, 548, 549 or 724(a), or preserved under 11 U.S.C. §§ 510(c)(2), 522(i)(2) or 551 is reinstated; any lien voided under 11 U.S.C. § 506(d) is reinstated; and any order, judgment or transfer ordered under 11 U.S.C. §§ 522(i)(1), 542, 550 or 553 is vacated.
- 3. All property of the estate, except payments made by the debtor to the trustee, will revert in the debtor as of the date of this order pursuant to 11 U.S.C. § 349.
- 4. Within 30 days of the date of this order, the trustee must distribute payments received from the debtor in accordance with the terms of the confirmed plan. 11 U.S.C. § 1326(a)(2).

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

Local Bankruptcy Form 2016-1.1.

COVER SHEET FOR APPLICATION FOR PROFESSIONAL COMPENSATION  
(Other Than Chapter 13 Debtor’s Counsel)

[Caption as in Bankruptcy Official Form 16A]

COVER SHEET FOR APPLICATION FOR PROFESSIONAL COMPENSATION  
(Other Than Chapter 13 Debtor’s Counsel)

Name of Applicant: \_\_\_\_\_  
Authorized to provide professional services to: \_\_\_\_\_  
Date of order authorizing employment: \_\_\_\_\_  
Period for which compensation is sought: \_\_\_\_\_  
Amount of fees sought: \$ \_\_\_\_\_  
Amount of expense reimbursement sought: \$ \_\_\_\_\_

This is a(n): Interim Application [ ] or Final Application [ ]

If this is not the first application filed herein by this professional, disclose as to all prior fee applications:

Date filed	Period Covered	Total Requested Fees & Expenses	Total Allowed
_____	_____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____

The aggregate amount of fees and expenses paid to the Applicant to date for services rendered and expenses incurred herein is \$\_\_\_\_\_.

\_\_\_\_\_



Local Bankruptcy Form 2016-3.1.

CHAPTER 13 SHORT FORM FEE APPLICATION

[Caption as in Bankruptcy Official Form No. 16B]

CHAPTER 13 SHORT FORM FEE APPLICATION

SUMMARY

Pursuant to 11 U.S.C. § 330, Applicant,                     (name of attorney)                    , attorney for the debtor, requests allowance of the following fees and reimbursement of out-of-pocket expenses incurred up to the date of confirmation as follows:

1. TOTAL FEES REQUESTED in this application	\$ _____
2. TOTAL EXPENSES REQUESTED in this application	+ \$ _____
(Total Fees and Expenses Requested)	= \$ _____
3. AMOUNT PAID TO DATE (exclusive of the filing fee)	- \$ _____
4. NET AMOUNT OF FEES AND EXPENSES TO BE PAID THROUGH CONFIRMED PLAN NOT TO EXCEED AMOUNT FUNDED BY THE PLAN	= \$ _____

DETAIL IN SUPPORT OF FEE REQUEST

1. FEES

Amount of fee Applicant agreed to with debtor for performing services to represent the debtor in this case: (amount disclosed in 2016(b) disclosure) .....\$ \_\_\_\_\_  
(amount disclosed in amended 2016(b) disclosure) .....\$ \_\_\_\_\_

A. This agreed upon fee represents (check applicable boxes):

- ☐ a flat fee for all basic services in the case
- ☐ hourly charges based upon time spent.
- ☐ other fee arrangement based upon \_\_\_\_\_ .

B. Applicant’s rate for attorney services is \$\_\_\_\_\_ / hour; the rate for associate attorney services is \$\_\_\_\_\_ / hour; and the rate for paralegal services is \$\_\_\_\_\_ / hour.

2. EXPENSES

Amount of expenses incurred:

_____ copies (at _____/copy)	\$ _____
Postage	\$ _____
Other (specify)	
Facsimile	\$ _____
Legal Research	\$ _____
_____	Total: \$ _____

APPLICANT’S CERTIFICATIONS  
IN SUPPORT OF SHORT FORM FEE APPLICATION

APPLICANT CERTIFIES/ATTESTS THAT:

1. I have performed ALL of the “Basic Services,” as needed, referenced in L.B.R. 2016-3 and listed in the applicable Chapter 13 General Procedure Order, as amended from time to time.

- 2. I provided a copy of the Basic Services list to my client.
- 3. The foregoing is true and accurate.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
*Counsel to* \_\_\_\_\_  
Attorney registration number \_\_\_\_\_  
Business address \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Facsimile number \_\_\_\_\_  
E-mail address \_\_\_\_\_

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Local Bankruptcy Form 2016-3.2.

CHAPTER 13 LONG FORM FEE APPLICATION

[Caption as in Bankruptcy Official Form No. 16B]

CHAPTER 13 LONG FORM FEE APPLICATION

SUMMARY

Pursuant to 11 U.S.C. § 330, Applicant, (name of attorney), attorney for the debtor, requests allowance of the following fees and reimbursement of out-of-pocket expenses incurred up to the date of confirmation as follows:

1. TOTAL FEES REQUESTED in this application
2. TOTAL EXPENSES REQUESTED in this application  
(Total Fees and Expenses Requested)
3. AMOUNT PAID TO DATE (exclusive of the filing fee)
4. NET AMOUNT OF FEES AND EXPENSES TO BE PAID  
THROUGH CONFIRMED PLAN NOT TO EXCEED  
AMOUNT FUNDED BY THE PLAN
- \$
- +
- =
- 
- =

DETAIL IN SUPPORT OF FEE REQUEST

1. FEES

Amount of fee Applicant agreed to with debtor for performing services to represent the debtor in this case:

(amount disclosed in 2016(b) disclosure).....\$  
(amount disclosed in amended 2016(b) disclosure).....\$

- A. This agreed upon fee represents (check applicable boxes):

☐ a flat fee for all basic services in the case

☐ hourly charges based upon time spent.

☐ other fee arrangement based upon .
- B. Applicant's rate for attorney services is \$ / hour; the rate for associate attorney services is \$ / hour; and the rate for paralegal services is \$ / hour.

2. EXPENSES

Amount of expenses incurred:

copies (at /copy)

Postage

Other (specify)

Facsimile

Legal Research

\$

\$

\$

\$

\$

Total:

APPLICANT'S CERTIFICATIONS  
IN SUPPORT OF LONG FORM FEE APPLICATION

APPLICANT CERTIFIES/ATTESTS THAT:

- Check applicable boxes:
1. ☐ I have not performed the following "Basic Services" referenced in L.B.R.



2016-3 and listed in the applicable Chapter 13 General Procedure Order, as amended from time to time:

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2. ☐ I am requesting a fee for services which exceeds the presumptively reasonable fee amount referenced in L.B.R. 2016-3 and listed in the applicable Chapter 13 General Procedure Order, as amended from time to time.

3. Attached to this Application are:

(a) A narrative describing the services rendered in the case and the reasons why the applicant seeks a fee in excess of the presumptively reasonable fee amount, such as results achieved, difficulties encountered or any other unique aspects of the case and discussing the standards of 11 U.S.C. § 330(a);

(b) Detailed time records describing all individual services which include:

(i) the time spent for each service rendered, broken out in tenths of an hour;

(ii) the hourly rate for each service rendered by the Applicant (and/or the hourly rate for Applicant's associates or paralegals);

(iii) the charge for each service rendered; and

(iv) such other and further information as the Applicant believes is necessary to support allowance of the fee pursuant to 11 U.S.C. § 330(a).

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Counsel to* \_\_\_\_\_

Attorney registration number

Business address

Telephone number

Facsimile number

E-mail address

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LOCAL BANKRUPTCY FORM 2016-3.3.

NOTICE OF CHAPTER 13 FEE APPLICATION

[Caption as in Bankruptcy Official Form No. 16B]

NOTICE OF CHAPTER 13 FEE APPLICATION

OBJECTION DEADLINE: (month/day/year) .

NOTICE IS HEREBY GIVEN that the undersigned counsel for the debtor has applied to this court or is intending to file a Chapter 13 (Short/Long) Form Fee Application requesting fees and expenses as follows:

Requested Fees: \$  
Requested Expenses: \$

A copy of the Chapter 13 Fee Application is attached.  
Pursuant to L.B.R. 2016-3, if you oppose or object to the application, your objection and request for hearing must be filed on or before the objection deadline stated above, served on the movant at the address indicated below, and must state clearly all objections and any legal basis for the objections. The court will not consider general objections.  
If there is no objection, the court may allow the fee as requested, order further supplementation or set the Chapter 13 Fee Application for hearing.

Dated:

By:  
Counsel to  
Attorney registration number  
Business address  
Telephone number  
Facsimile number  
E-mail address

Commentary

All dates or deadlines should be printed in bold type face.

LOCAL BANKRUPTCY FORM 2016-3.4.

ORDER ALLOWING AND APPROVING FEES

[Caption as in Bankruptcy Official Form No. 16B]

ORDER ALLOWING AND APPROVING FEES

\_\_\_\_\_, counsel for the debtor, is allowed a fee for services herein of \$\_\_\_\_\_ and reimbursement of out-of-pocket expenses of \$\_\_\_\_\_. Counsel received \$\_\_\_\_\_ prepetition. The remaining balance, \$\_\_\_\_\_, is payable out of plan payments.

Dated: \_\_\_\_\_ BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

Commentary

Debtor’s counsel must fill in the blanks above with the actual dollar amounts.

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**LOCAL BANKRUPTCY FORM 2081-1.1.****COVERSHEET FOR MOTION SEEKING EXPEDITED ENTRY OF ORDER(S)  
AND NOTICE OF IMPENDING HEARINGS THEREON**

[Caption as in Bankruptcy Official Form 16A]

**COVERSHEET FOR MOTION SEEKING EXPEDITED ENTRY OF ORDER(S)  
AND NOTICE OF IMPENDING HEARINGS THEREON**

The Debtor in the above-captioned Chapter 11 filed on           (month/day/year)          , requests the Court to enter the Orders listed below on an expedited basis, pursuant to L.B.R. 2081-1. **THE DEBTOR HAS FILED A MOTION SEEKING EXPEDITED ENTRY OF THE FOLLOWING ORDER(S):**

1.          Order Authorizing the Joint Administration of Multiple Debtor Bankruptcy Cases (see L.B.R. 1015-1)
  2.          Order Authorizing Payment of Prepetition Wages, Salaries, Expenses
  3.          Interim Order Authorizing Use of Cash Collateral (see L.B.R. 4001-3)
  4.          Interim Approval of Post Petition Secured and/or Super-Priority Financing Pursuant to Section 364(c) of the Bankruptcy Code
  5.          Order Authorizing Payment of Prepetition Claims of Certain Critical Vendors and Suppliers
  6.          Order Authorizing Debtor to Honor Certain Customer Obligations, Including Warranty Claims
  7.          Interim Order Determining Adequate Assurance of Payment for Future Utility Services and Restraining Utility Companies from Discontinuing, Altering or Refusing Service
  8.          Order Establishing Interim Notice Procedures (see L.B.R. 2081-2)
  9.          Order Authorizing Bonus or Retention Plans
  10.          Order Authorizing Retention of Cash Management Systems
  11.          Order Establishing Investment Guidelines
  12.          Other Orders
- 
-

LOCAL BANKRUPTCY FORM 2081-1.2.

NOTICE OF FILING OF CHAPTER 11 DEBTOR'S  
MOTION SEEKING EXPEDITED ENTRY OF ORDER(S)

[Caption as in Bankruptcy Official Form 16A]

NOTICE OF FILING OF CHAPTER 11 DEBTOR'S  
MOTION SEEKING EXPEDITED ENTRY OF ORDER(S)

**L.B.R. 2081-1 PROVIDES THAT A HEARING WILL BE HELD ON DEBTOR'S MOTION WITHIN THREE DAYS.** Debtor will give you fax or e-mail notice of the time and place of the hearing only if you respond to this Notice by fax or e-mail stating that you wish to be notified of the hearing. Your response may be in the form of L.B. Form 2081-1.3 and must specify the fax or e-mail address at which you wish to receive notice. If you specify more than one method of notice, Debtor will use the method most readily available to Debtor. You may also obtain information on the time and place of the hearing by checking the Court's calendar over the internet at [www.cob.uscourts.gov](http://www.cob.uscourts.gov).

**REQUESTS FOR NOTICE OF THE HEARING SHALL BE FAXED OR EMAILED TO COUNSEL FOR DEBTOR AT \_\_\_\_\_ or \_\_\_\_\_.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

Commentary

All dates or deadlines should be printed in bold type face.

LOCAL BANKRUPTCY FORM 2081-1.3.

RESPONSE AND REQUEST FOR NOTICE OF HEARING

[Caption as in Bankruptcy Official Form 16A]

RESPONSE AND REQUEST FOR NOTICE OF HEARING

Attention: (insert name of counsel who signed the Motion and Notice) .

The undersigned requests that notice of the date, time and place of the hearing on Debtor's Motion Seeking Expedited Entry of Orders be served as follows:

By e-mail to  
By fax to

Dated:

By:  
Counsel to  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address



LOCAL BANKRUPTCY FORM 2081-1.4.

NOTICE OF TIME AND PLACE OF HEARING ON DEBTOR'S  
MOTION SEEKING EXPEDITED ENTRY OF ORDERS

[Caption as in Bankruptcy Official Form 16A]

NOTICE OF TIME AND PLACE OF HEARING ON DEBTOR'S  
MOTION SEEKING EXPEDITED ENTRY OF ORDERS

A HEARING HAS BEEN SET on Debtor's Motion Seeking Expedited Entry of  
Orders (Docket No. \_\_\_\_\_).

The date, time and place of the hearing are as follows:

Date: \_\_\_\_\_  
Time: \_\_\_\_\_  
Court: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

LOCAL BANKRUPTCY FORM 2082-1.1.

MOTION TO CONFIRM CHAPTER 12 PLAN

[Caption as in Bankruptcy Official Form No. 16B]

MOTION TO CONFIRM CHAPTER 12 PLAN

THE DEBTOR MOVES FOR ORDERS AS FOLLOWS:

(1) For an order confirming the chapter 12 plan filed (month/day/year), (the "Plan").

(2) In accordance with the requirements of 11 U.S.C. § 1225(a)(4), debtor asserts that as of the effective date of the Plan, the value of property to be distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7, Title 11, United States Code, on such date. This contention is based upon the facts set forth below:

a. As of the date of the petition, the debtor owned property which would be property of the estate, as defined by 11 U.S.C. § 541, if a petition had been filed under Chapter 7 of Title 11 of the United States Code. That property has a liquidation value after deduction of the amount of liens and encumbrances against such property of \$

b. If debtor had filed a petition for relief under chapter 7 on same date, debtor would be entitled to exempt from the estate property having a value of \$ Debtor has claimed such property as exempt in the manner required by law.

c. If debtor had filed a petition under chapter 7 on said date:

1. Debtor would owe debts entitled to priority under 11 U.S.C. § 507, including costs of administration, in the total amount of \$

2. Debtor would owe allowed unsecured claims in the total amount of \$

d. There would be available for distribution to creditors holding allowed unsecured claims after payment of priority claims an amount of \$

e. It is estimated that distribution under chapter 7 to each creditor holding an unsecured claim as of said date would be % of each claim.

f. The plan provides that creditors holding allowed unsecured claims which are timely filed in accordance with FED. R. BANKR. P. 3002 and 3004 will receive at least % of each claim.

(3) For an order pursuant to 11 U.S.C. § 506(a) valuing secured claims which are to be paid through the Plan (list here all claims in which there is a dispute over the value of collateral).

Debtor alleges that the allowed secured and allowed unsecured claims of creditors holding collateral are:

Name of Creditor	Description of Collateral	Amount of Debt	Debtor's Contention of Value of Collateral

Debtor believes the property has the value set forth above because:

(4) For an order pursuant to 11 U.S.C. § 1225(a)(5) valuing property to be distributed under the Plan to holders of secured claims who do not accept the Plan (list here all such secured claims whether the value of collateral is disputed or admitted).

In support of confirmation and for determination that as of the effective date of the Plan the value of property to be distributed to holders of secured claims under the Plan is not less than the allowed amount of such claims, it is alleged that the following is correct:

Name of Creditor	Allowed Secured Claim	Total to be paid on secured claim	Capitalization rate in percentage
_____	_____	_____	_____
_____	_____	_____	_____

Creditors shall take notice that in the absence of a written objection by a creditor, the valuations asserted above by the debtor will be accepted by the court and shall be used in the court's determination of the amounts to be distributed to holders of secured claims who do not accept the Plan.

The capitalization rate set forth above was chosen because:\_\_\_\_\_

(5) For an order approving the classification of claims (strike this paragraph if not applicable).

In support of a determination that the classification of unsecured claims in the Plan complies with 11 U.S.C. § 1222(b)(1), it is asserted that the classification contained in the Plan is based upon the facts asserted below.

Unsecured claims (Class Four) are classified as follows:  
The Plan provides the same treatment for each claim within each subclass of Class Four.  
The claims of each subclass of Class Four are substantially similar to the remaining claims in that subclass because\_\_\_\_\_

The division of unsecured claims into subclasses does not discriminate unfairly against any other subclass because \_\_\_\_\_.

(6) For an order pursuant to 11 U.S.C. § 1222(c) approving time for payments over a period of more than 36 months (strike any portion of this paragraph not applicable).

The Plan requires payment over a period of approximately \_\_\_\_\_ months. Because the Plan takes more than 36 months to complete distribution, the debtor requests approval of the court. Cause exists for the payment over a period of more than three years but not longer than five years as follows (explain):\_\_\_\_\_

Dated: _____	By: _____ Signature of debtor
Dated: _____	By: _____ Signature of joint debtor
Dated: _____	By: _____ Counsel to _____ Attorney registration number (if applicable) Business address (or home address for <i>pro se</i> ) Telephone number Facsimile number E-mail address

**Verification**

Under penalty of perjury, I do hereby adopt the statements contained in this motion and state that those statements are true to the best of my knowledge and belief.

Dated: _____	By: _____ Signature of debtor
Dated: _____	By: _____ Signature of joint debtor

\_\_\_\_\_



**LOCAL BANKRUPTCY FORM 2082-1.2.****ORDER GRANTING MOTION TO CONFIRM AND CONFIRMING  
CHAPTER 12 PLAN**

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[Caption as in Bankruptcy Official Form No. 16B]

**ORDER GRANTING MOTION TO CONFIRM AND CONFIRMING  
CHAPTER 12 PLAN**

IT HAVING BEEN DETERMINED AFTER NOTICE AND A HEARING:

That the Plan complies with chapter 12 and all other applicable provisions of Title 11, United States Code;

That any fee, charge, or amount required under Chapter 123 of Title 28, United States Code, or by the Plan, to be paid before confirmation, has been paid;

That the Plan has been proposed in good faith and not by any means forbidden by law;

That the value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of Title 11, United States Code on such date;

That the Plan provides that the holders of secured claims who have not accepted the Plan shall retain their liens, and the value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each secured claim whose holder has not accepted the Plan is not less than the allowed amount of each of those claims;

That the debtor will be able to make all payments under the plan and to comply with the plan;

That, if this order is entered after an objection to confirmation has been filed herein, the value of the property to be distributed under the Plan on account of the objector's claim is not less than the amount of such claim, or the plan provides that all of the debtor's projected disposable income to be received during the plan, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.

IT IS ORDERED:

The Motion to Confirm is granted;

The debtor's Plan is confirmed;

The assumption of executory contracts on the terms stated in the Plan is approved.

The debtor shall make the payments specified in the plan in the amounts and on the dates provided for therein.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

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## LOCAL BANKRUPTCY FORM 2082-1.3.

**NOTICE OF HEARING AND THE RIGHT TO OBJECT TO CHAPTER 12 PLAN  
OBJECTION DEADLINE: \_\_\_\_\_**

[Caption as in Bankruptcy Official Form No. 16B]

**NOTICE OF HEARING AND THE RIGHT TO OBJECT TO  
CHAPTER 12 PLAN  
OBJECTION DEADLINE: \_\_\_\_\_**

NOTICE IS HEREBY GIVEN that the above-captioned debtor has filed herein a plan for the payment of debts pursuant to the provisions of chapter 12 of Title 11 of the United States Code, together with a Motion to Confirm Chapter 12 Plan (collectively, the "Plan").

A confirmation hearing on the debtor's Plan has been set for      (month/day/ year)      at      (time)      at the U. S. Bankruptcy Court, U.S. Custom House, 721 19th Street, Courtroom       , Fifth Floor, Denver, Colorado 80202.

PLEASE TAKE FURTHER NOTICE that any party objecting to the confirmation of the Plan must file a written objection on or before the objection deadline stated above. The objection must be filed with the court and served upon the debtor's counsel (or the debtor if not represented by counsel) at the address below, and upon the chapter 12 trustee on or before the objection deadline stated above. The objection must specify the grounds upon which the objection is made and any legal basis for the objection. The court will not consider general objections.

If no objection is filed and served within the time specified, the court may confirm the Plan without taking further evidence. If objections to confirmation are filed, at the preliminary hearing no evidence will be taken and no witnesses need appear, but the court will hear the preliminary statements of the parties, will conduct a status conference to determine the matters at issue and the time needed for hearing, may enter orders concerning discovery and will set a final date for the hearings on the confirmation of the debtor's Plan which date will, in any event, be within the time mandated by 11 U.S.C. § 1224, unless said date is continued for cause.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

**Commentary**

All deadlines and hearing dates and times should be provided in bold type face. The objection deadline must not be less than three (3) court days prior to the date set for the confirmation hearing.

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LOCAL BANKRUPTCY FORM 3003-1.1.

ORDER ESTABLISHING BAR DATE FOR THE FILING OF PROOFS  
OF CLAIM PURSUANT TO FED. R. BANKR. P. 3003(c)(3)

[Caption as in Bankruptcy Official Form 16A]

ORDER ESTABLISHING BAR DATE FOR THE FILING OF PROOFS OF  
CLAIM PURSUANT TO FED. R. BANKR. P. 3003(c)(3)

THIS COURT, having reviewed the \_\_\_\_\_ (the “Motion”), filed by \_\_\_\_\_, debtor-in-possession, being advised in the premises and good cause having been shown, hereby:

ORDERS that the motion is GRANTED.

IT IS FURTHER ORDERED that the Proofs of Claim in the above-captioned chapter 11 bankruptcy case must be filed no later than \_\_\_\_\_ (month/day/year), (the “Bar Date”).

IT IS FURTHER ORDERED that any claims filed after the Bar Date will be DISALLOWED. Any individual or entity that is required to file a Proof of Claim and that fails to do so by the Bar Date will not be treated as a creditor for the purposes of voting or distribution, will not receive any further notices of mailings in this chapter 11 case and any claim of such individual or entity will be forever barred against \_\_\_\_\_.<sup>1</sup>

IT IS FURTHER ORDERED that following the Bar Date, a creditor will not be allowed to amend a claim deemed filed on its behalf pursuant to 11 U.S.C. § 1111(a) by virtue of the listing of such claim by debtors in their respective bankruptcy schedules.

IT IS FURTHER ORDERED that a copy of this order, notice in the form attached hereto as Exhibit A, and a Proof of Claim form must be served on all parties-in-interest pursuant to FED. R. BANKR. P. 2002(a)(7) by \_\_\_\_\_.

IT IS FURTHER ORDERED that the form of Proof of Claim transmitted to creditors must comply with Official Form B10 in all respects, including the information contained on its reverse side.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

<sup>1</sup>Subject to 11 U.S.C. § 726(a)(1) in the event of conversion.



## LOCAL BANKRUPTCY FORM 3003-1.2.

**NOTICE OF ORDER ESTABLISHING PROCEDURES AND  
BAR DATE FOR THE FILING OF PROOFS OF CLAIM  
PURSUANT TO FED. R. BANKR. P. 3003(c)(3)**

[Caption as in Bankruptcy Official Form 16A]

**NOTICE OF ORDER ESTABLISHING PROCEDURES AND  
BAR DATE FOR THE FILING OF PROOFS OF CLAIM  
PURSUANT TO FED. R. BANKR. P. 3003(c)(3)**

**TO INDIVIDUALS AND ENTITIES WHO MAY BE CREDITORS OF DEBTOR:**

Please take notice that the bankruptcy court has entered an order establishing procedures and a bar date for filing proofs of claim pursuant to Bankruptcy Rule 3003(c)(3) as follows:

(a) All proofs of claim must be filed with the Clerk of the bankruptcy court by e-filing, by mail or in person, such that they are received no later than           (month/day/year)           (the “**Bar Date**”), at the following address:

Clerk of the United States Bankruptcy Court  
United States Custom House  
721 19th Street  
Denver, Colorado 80202.

**CLAIMS ARE NOT DEEMED FILED UNTIL ACTUALLY RECEIVED BY THE CLERK.**

(b) **ANY CLAIMS FILED AFTER THE BAR DATE WILL BE DISALLOWED.** Any individual or entity that is required to file a proof of claim by the Bar Date and that fails to do so will not be treated as a creditor for the purposes of voting or distribution, may not receive any further notices of mailings in this chapter 11 case and any claim of such individual or entity will be forever barred.

(c) Any creditor holding a claim arising prior to date of debtor’s chapter 11 bankruptcy filing,           (insert petition date here)          , must file a proof of claim with the court if the claim is: (i) not scheduled, (ii) scheduled as disputed, contingent, or unliquidated, or (iii) if such creditor disagrees with the amount of the scheduled claim.

(d) Following the Bar Date, a creditor will not be allowed to amend a claim deemed filed on its behalf pursuant to 11 U.S.C. § 1111(a) by virtue of the listing of such claim by debtors in their respective bankruptcy schedules.

(e) **CLAIMANTS WHO HAVE ALREADY FILED THEIR PROOFS OF CLAIM SHOULD NOT FILE A DUPLICATE CLAIM.** Claimants who have filed a Proof of Claim MAY file an amended Proof of Claim by the Bar Date.

**ANY CLAIM NOT TIMELY FILED WITH THE CLERK WITHIN THE TIME SET FORTH ABOVE WILL BE FOREVER BARRED FROM SHARING IN THE ESTATE OR BEING TREATED AS A CLAIM FOR PURPOSES OF VOTING OR DISTRIBUTION.<sup>1</sup>**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

<sup>1</sup>Subject to 11 U.S.C. § 726(a)(1) in the event of conversion.

Commentary

All dates or deadlines should be printed in bold type face.

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**LOCAL BANKRUPTCY FORM 3003-1.3.****NOTICE OF ORDER ESTABLISHING PROCEDURES AND  
BAR DATE FOR THE FILING OF PROOFS OF CLAIM  
PURSUANT TO FED. R. BANKR. P. 3003(c)(3)**

[Caption as in Bankruptcy Official Form 16A, for Jointly Administered cases]

**NOTICE OF ORDER ESTABLISHING PROCEDURES AND  
BAR DATE FOR THE FILING OF PROOFS OF CLAIM  
PURSUANT TO FED. R. BANKR. P. 3003(c)(3)****TO INDIVIDUALS AND ENTITIES WHO MAY BE CREDITORS OF DEBTOR:**

Please take notice that the bankruptcy court has entered an order establishing procedures and a bar date for filing proofs of claim pursuant to Bankruptcy Rule 3003(c)(3) as follows:

(a) All proofs of claim must be filed with the Clerk of the bankruptcy court by e-filing, by mail or in person, such that they are received no later than (month/day/year) (the “**Bar Date**”), at the following address:

Clerk of the United States Bankruptcy Court  
United States Custom House  
721 19th Street  
Denver, Colorado 80202.

**CLAIMS ARE NOT DEEMED FILED UNTIL ACTUALLY RECEIVED BY THE CLERK.**

(b) **ANY CLAIMS FILED AFTER THE BAR DATE WILL BE DISALLOWED.** Any individual or entity that is required to file a proof of claim by the Bar Date and that fails to do so will not be treated as a creditor for the purposes of voting or distribution, may not receive any further notices of mailings in this chapter 11 case and any claim of such individual or entity will be forever barred.

(c) Any creditor holding a claim arising prior to date of debtor’s chapter 11 bankruptcy filing, \_\_\_\_\_, must file a proof of claim with the court if the claim is: (i) not scheduled, (ii) scheduled as disputed, contingent, or unliquidated, or (iii) if such creditor disagrees with the amount of the scheduled claim.

(d) Following the Bar Date, a creditor will not be allowed to amend a claim deemed filed on its behalf pursuant to 11 U.S.C. § 1111(a) by virtue of the listing of such claim by debtors in their respective bankruptcy schedules.

(e) **PROOFS OF CLAIM MUST NOT BE FILED NAMING THE LEAD DEBTOR’S NAME, \_\_\_\_\_ (insert lead debtor’s name) UNLESS THE LEAD DEBTOR IS THE ACTUAL ENTITY AGAINST WHOM THE CLAIM IS MADE. \_\_\_\_\_ (insert lead debtor’s name) IS THE NAME PROVIDED FOR JOINT BANKRUPTCY ADMINISTRATION ONLY. IN EACH PROOF OF CLAIM FILED WITH THE COURT YOU MUST (1) NAME ONE SPECIFIC DEBTOR, AND (2) STATE THAT DEBTOR’S INDIVIDUAL BANKRUPTCY CASE NUMBER AS SET FORTH ABOVE. DO NOT COMBINE CLAIMS AGAINST TWO OR MORE DEBTORS INTO ONE PROOF OF CLAIM FORM.** In order to assist in the review and reconciliation of proofs of claim, claims should include copies of any invoices, statements or other documents which evidence or support the amount and basis of the claim.

(f) **CLAIMANTS WHO HAVE ALREADY FILED THEIR PROOFS OF CLAIM SHOULD NOT FILE A DUPLICATE CLAIM.** Claimants who have filed a Proof of Claim MAY file an amended Proof of Claim by the Bar Date.

**ANY CLAIM NOT TIMELY FILED WITH THE CLERK WITHIN THE TIME SET FORTH ABOVE WILL BE FOREVER BARRED FROM SHARING IN THE ESTATE OR BEING TREATED AS A CLAIM FOR PURPOSES OF VOTING OR DISTRIBUTION.<sup>1</sup>**



Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Counsel to* \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

<sup>1</sup>Subject to 11 U.S.C. § 726(a)(1) in the event of conversion.

**Commentary**

[Source: New.]

The caption for jointly administered cases must be in compliance with L.B.R. 1015-1: All motions, pleadings and other documents filed in the jointly administered cases must be filed, docketed and processed in the lead case and bear a combined caption, including the full name and case number of each specific case as in Bankruptcy Official Form 16A. This does not apply to proofs of claim which should be filed in each specific case.

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## LOCAL BANKRUPTCY FORM 3003-1.4.

**ORDER SETTING BAR DATE FOR FILING MOTIONS FOR  
ALLOWANCE OF CHAPTER 11 ADMINISTRATIVE EXPENSE CLAIMS**

[Caption as in Bankruptcy Official Form 16A]

**ORDER SETTING BAR DATE FOR FILING MOTIONS FOR ALLOWANCE OF  
CHAPTER 11 ADMINISTRATIVE EXPENSE CLAIMS**

THIS MATTER comes before the court on the \_\_\_\_\_ (“Motion”). The court, having reviewed the pleadings and being advised,

ORDERS that the Motion is GRANTED.

IT IS FURTHER ORDERED that all motions seeking payment of chapter 11 administrative expenses, along with L.B. Form 9013-1.1 Notice must be filed no later than (month/day/year) (the “Bar Date”). FILINGS ARE EFFECTIVE UPON RECEIPT BY THE CLERK OF THE COURT. IT IS NOT SUFFICIENT TO FILE A PROOF OF CLAIM ASSERTING AN ADMINISTRATIVE EXPENSE WITHOUT FILING AN APPROPRIATE MOTION AND L.B. FORM 9013-1.1 NOTICE BY THE DEADLINE.

IT IS FURTHER ORDERED that any requests for payment of chapter 11 administrative expenses filed after the Bar Date will be DISALLOWED. Any individual or entity that is required to file a request for payment of an administrative claim and that fails to do so by the Bar Date will not be treated as a creditor for the purposes of distribution, and any claim of such individual or entity will be forever barred against \_\_\_\_\_.<sup>1</sup>

IT IS FURTHER ORDERED that a copy of this order and notice in the form attached hereto as Exhibit A must be served on all parties-in-interest by \_\_\_\_\_:

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

<sup>1</sup>Subject to 11 U.S.C. § 726(a)(1) in the event of conversion.

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**EXHIBIT A TO L.B. FORM 3003-1.4.****NOTICE OF ORDER ESTABLISHING PROCEDURES AND BAR DATE  
FOR FILING MOTIONS FOR ALLOWANCE OF CHAPTER 11  
ADMINISTRATIVE EXPENSE CLAIMS**

[Caption as in Bankruptcy Official Form 16A]

**NOTICE OF ORDER ESTABLISHING PROCEDURES AND BAR DATE  
FOR FILING MOTIONS FOR ALLOWANCE OF CHAPTER 11  
ADMINISTRATIVE EXPENSE CLAIMS****TO ALL CREDITORS AND PARTIES IN INTEREST:**

Please take notice that the bankruptcy court has entered an order fixing           (month/  
day/year)          , as the last date for filing a motion for Allowance of Administrative  
Expense Claims under 11 U.S.C. § 503 arising in the above-captioned case prior to  
\*conversion to chapter 7/confirmation of its Chapter 11 Plan of Reorganization [\* delete  
inapplicable language], including final applications by professionals for fees and expenses  
subject to fee applications.

To be deemed properly filed, a Motion for Allowance of Administrative Expense Claims,  
along with proper L.B. Form 9013-1.1 Notice, must be filed with the Clerk of the United  
States Bankruptcy Court for the District of Colorado, United States Custom House, 721  
19th Street, Denver, Colorado 80202 by e-filing, in person or by mail such that they are  
received no later than           (month/day/year)          , (the "Bar Date"). MOTIONS ARE  
NOT DEEMED FILED UNTIL ACTUALLY RECEIVED BY THE CLERK.

**ANY CHAPTER 11 ADMINISTRATIVE EXPENSE CLAIMS FOR WHICH A  
MOTION FOR ALLOWANCE OF CHAPTER 11 ADMINISTRATIVE EXPENSE  
AND L.B. Form 9013-1.1 NOTICE ARE NOT FILED BY           (month/day/year)          ,  
WILL BE DISALLOWED AND ANY ADMINISTRATIVE CLAIM OF SUCH EN-  
TITY WILL BE FOREVER BARRED AND WILL NOT SHARE IN THE ESTATE.<sup>1</sup>**

**IT IS NOT SUFFICIENT TO FILE A PROOF OF CLAIM ASSERTING AN  
ADMINISTRATIVE EXPENSE WITHOUT FILING AN APPROPRIATE MOTION  
AND L.B. Form 9013-1.1 NOTICE BY THE DEADLINE.**

A copy of the court's order may be inspected at the Office of the Clerk at the address  
listed above.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Counsel to* \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

<sup>1</sup>Subject to 11 U.S.C. § 726(a)(1) in the event of conversion.



LOCAL BANKRUPTCY FORM 3004-1.1.

NOTICE OF FILING PROOF OF CLAIM

[Caption as in Bankruptcy Official Form 16A]

NOTICE OF FILING PROOF OF CLAIM

This Notice is to inform you that \_\_\_\_\_ (debtor or trustee) has filed a Proof of Claim on your behalf in this case. A copy of the proof of claim is attached.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Signature of debtor, counsel, trustee, or other*  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

Certificate of Service

\_\_\_\_\_

**LOCAL BANKRUPTCY FORM 3012-1.1.****ORDER GRANTING MOTION FOR VALUATION OF COLLATERAL AND  
DETERMINATION OF SECURED STATUS**

[Caption as in Bankruptcy Official Form No. 16B]

**ORDER GRANTING MOTION FOR VALUATION OF COLLATERAL AND  
DETERMINATION OF SECURED STATUS**

THIS MATTER COMES BEFORE THE COURT on the *Debtor's Motion for Valuation of Collateral and Determination of Secured Status Under 11 U.S.C. § 506* (the "Motion") (docket no. \_\_\_\_).

**IT IS HEREBY ORDERED:**

1. The Debtor's Motion is GRANTED.
2. The lien held by \_\_\_\_\_ (name of creditor) on \_\_\_\_\_ (street or other common address of property) is valued at zero (\$0) and is entirely unsecured for purposes of the debtor's plan.
3. The creditor will have an unsecured claim in either the amount of the debt as listed in the debtor's schedules or on any allowed proof of claim filed by the creditor (whichever is greater).
4. Upon successful completion of the debtor's plan, the debtor may request an order that the lien is extinguished.
5. If the bankruptcy case is dismissed or converted to a chapter 7, this Order shall be deemed vacated and the lien shall be reinstated and shall continue in full force and effect as specifically provided by 11 U.S.C. §§ 348(f)(1)(C) and 349(b)(1)(C).

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

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LOCAL BANKRUPTCY FORM 3015-1.1.

CHAPTER 13 PLAN  
INCLUDING VALUATION OF COLLATERAL  
AND CLASSIFICATION OF CLAIMS

[Caption as in Bankruptcy Official Form No. 16A]

CHAPTER 13 PLAN  
INCLUDING VALUATION OF COLLATERAL  
AND CLASSIFICATION OF CLAIMS

**CHAPTER 13 PLAN:** This chapter 13 plan dated           (month/day/year)           supersedes all previously filed plans.

**NOTICE TO CREDITORS: THIS PLAN MAY MODIFY YOUR RIGHTS.** If you oppose any provision of the plan you must file an objection with the bankruptcy court by the deadline fixed by the court. (Applicable deadlines given by separate notice.) If you do not file a timely objection, you will be deemed to have accepted the terms of the plan, which may be confirmed without further notice or hearing.

**MOTIONS FOR VALUATION OF COLLATERAL AND DETERMINATION OF SECURED STATUS UNDER 11 U.S.C. § 506** (Check any applicable box(s)):

☐ This plan contains a motion for valuation of *personal property* collateral and determination of secured status under 11 U.S.C. § 506.

\_\_\_\_\_

☐ The debtor is requesting a valuation of *real property* collateral and determination of secured status under 11 U.S.C. § 506 by separate motion filed contemporaneously with this plan.

or

☐ This plan contains a provision modifying the value of *real property* collateral under 11 U.S.C. § 506 in accordance with a previously filed motion or a prior order of this Court. List the date of any previously filed motions, the status of the motions (granted, objections pending, objections resolved) and any corresponding docket numbers:\_\_\_\_\_

\_\_\_\_\_

**SECURED CLAIMS SUBJECT TO VALUATION OF COLLATERAL AND DETERMINATION OF SECURED STATUS UNDER 11 U.S.C. § 506** (additional detail must be provided at Part IV of the plan):

Name of Creditor	Description of Collateral (pursuant to L.B.R. 3012-1)
_____	_____
_____	_____
_____	_____
_____	_____

**I. BACKGROUND INFORMATION**

A. Prior bankruptcies pending within one year of the petition date for this case:



Case Number & Chapter	Discharge or Dismissal/Conversion	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

- B. The debtor(s): ☐ is eligible for a discharge; or   
 ☐ is not eligible for a discharge and is not seeking a discharge.
- C. Prior states of domicile: within 730 days \_\_\_\_\_   
 within 910 days \_\_\_\_\_   
 The debtor is claiming exemptions available in the ☐ state of \_\_\_\_\_ or   
 ☐ federal exemptions.
- D. The debtor owes or anticipates owing a Domestic Support Obligation as defined in 11 U.S.C. § 101(14A). Notice will/should be provided to these parties in interest:   
 1. Spouse/Parent \_\_\_\_\_   
 2. Government \_\_\_\_\_   
 3. Assignee or other \_\_\_\_\_
- E. The debtor ☐ has provided the Trustee with the address and phone number of the Domestic Support Obligation recipient or ☐ cannot provide the address or phone number because it he/ she is/are not available.
- F. The current monthly income of the debtor, as reported on Interim Form B22C is:   
 ☐ below, ☐ equal to, or ☐ above the applicable median income.

II. PLAN ANALYSIS

- A. Total Debt Provided for under the Plan and Administrative Expenses
1. Total Priority Claims (Class One)   
 a. Unpaid attorney’s fees \$ \_\_\_\_\_   
 Total attorney’s fees are estimated to be \$ \_\_\_\_\_ of which \$ \_\_\_\_\_   
 has been prepaid.   
 b. Unpaid attorney’s costs (estimated) \$ \_\_\_\_\_   
 c. Total Taxes \$ \_\_\_\_\_   
 Federal: \$ \_\_\_\_\_ ; State: \$ \_\_\_\_\_   
 d. Other \$ \_\_\_\_\_
2. Total of payments to cure defaults (Class Two) \$ \_\_\_\_\_
3. Total payment on secured claims (Class Three) \$ \_\_\_\_\_
4. Total of payments on unsecured claims (Class Four) \$ \_\_\_\_\_
5. Sub-total \$ \_\_\_\_\_
6. Total trustee’s compensation (10% of debtor’s payments) \$ \_\_\_\_\_
7. Total debt and administrative expenses \$ \_\_\_\_\_
- B. Reconciliation with Chapter 7

*THE NET PROPERTY VALUES SET FORTH BELOW ARE LIQUIDATION VALUES RATHER THAN REPLACEMENT VALUES. THE REPLACEMENT VALUES MAY APPEAR IN CLASS THREE OF THE PLAN.*

1. Assets available to Class Four unsecured creditors if Chapter 7 filed:

a. Value of debtor’s interest in non-exempt property \$ \_\_\_\_\_

Property	Value	Less costs of sale	Less Liens	X Debtor’s Interest	Less Exemptions	= Net Value
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

b. Plus: value of property recoverable under avoiding powers \$ \_\_\_\_\_

c. Less: estimated Chapter 7 administrative expenses \$ \_\_\_\_\_

- d. Less: amounts payable to priority creditors other than costs of administration \$ \_\_\_\_\_
- e. Equals: estimated amount payable to Class Four creditors if Chapter 7 filed (if negative, enter zero) \$ \_\_\_\_\_
- 2. Estimated payment to Class Four unsecured creditors under the Chapter 13 Plan plus any funds recovered from "other property" described in Section III.A.3 below.

**III. PROPERTIES AND FUTURE EARNINGS SUBJECT TO THE SUPERVISION AND CONTROL OF THE TRUSTEE**

A. The debtor submits to the supervision and control of the Trustee all or such portion of the debtor's future earnings or other future income as is necessary for the execution of the Plan, including:

- 1. Future earnings of \$ \_\_\_\_\_ per month which shall be paid to the trustee for a period of approximately \_\_\_\_\_ months, beginning \_\_\_\_\_, 20\_\_\_\_.

Amount	Number of Months	Total
_____	_____	_____

**One time payment and date**

- 2. Amounts for the payment of Class Five post-petition claims included in above \$ \_\_\_\_\_
- 3. Other property (specify): \_\_\_\_\_

**AT THE TIME THE FINAL PLAN PAYMENT IS SUBMITTED TO THE TRUSTEE, THE DEBTOR SHALL FILE WITH THE COURT THE CERTIFICATION REGARDING DOMESTIC SUPPORT OBLIGATIONS REQUIRED BY 11 U.S.C. § 1328(a) AND, IF NOT ALREADY FILED, INTERIM FORM B23 REGARDING COMPLETION OF FINANCIAL MANAGEMENT INSTRUCTION REQUIRED BY 11 U.S.C. § 1328(g)(1).**

- B. Debtor agrees to make payments under the Plan as follows:  
\_\_\_\_\_ VOLUNTARY WAGE ASSIGNMENT TO EMPLOYER:  
Employer's Name, address, telephone number

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OR**

\_\_\_\_\_ DIRECT PAYMENT from debtor to Trustee:  
Paid in the following manner: \$ \_\_\_\_\_ to be deducted \_\_\_\_\_ (weekly, monthly, per pay period, etc.)

**IV. CLASSIFICATION AND TREATMENT OF CLAIMS**

**CREDITOR RIGHTS MAY BE AFFECTED. A WRITTEN OBJECTION MUST BE FILED IN ORDER TO CONTEST THE TERMS OF THIS PLAN. CREDITORS OTHER THAN THOSE IN CLASS TWO A AND CLASS THREE MUST FILE TIMELY PROOFS OF CLAIM IN ORDER TO RECEIVE THE APPLICABLE PAYMENTS.**

A. Class One - Claims entitled to priority under 11 U.S.C. § 507. Unless other provision is made in paragraph V.(C), each creditor in Class One shall be paid in full in deferred cash payments prior to the commencement of distributions to any other class

(except that the payments to the Trustee shall be made by deduction from each payment made by the debtor to the Trustee) as follows:

1. Allowed administrative expenses

- a. Trustee's compensation (10% of amounts paid by debtor under this Plan)

\$ \_\_\_\_\_

- b. Attorney's Fees (estimated and subject to allowance) \$ \_\_\_\_\_

- c. Attorney's Costs (estimated and subject to allowance) \$ \_\_\_\_\_

2. Other priority claims to be paid in the order of distribution provided by 11

U.S.C. § 507 (if none, indicate)

a. Domestic Support Obligations: A proof of claim- must be timely filed in order for the Trustee to distribute amounts provided by the plan.

Priority support arrearage: Debtor owes past due support to \_\_\_\_\_ in the total amount of \$ \_\_\_\_\_ that will be paid as follows:

- [ ] Distributed by the Trustee pursuant to the terms of the Plan; or

[ ] Debtor is making monthly payments via a wage order [ ] or directly [ ] (reflected on Schedule I or J) in the amount of \$ \_\_\_\_\_ to \_\_\_\_\_. Of that monthly amount, \$ \_\_\_\_\_ is for current support payments and \$ \_\_\_\_\_ is to pay the arrearage.

Other: For the duration of the plan, during the anniversary month of confirmation, the debtor shall file with the Court and submit to the Trustee an update of the required information regarding Domestic Support Obligations and the status of required payments.

- b. Federal Taxes \$ \_\_\_\_\_

- c. State Taxes \$ \_\_\_\_\_

- d. Other Taxes (describe): \_\_\_\_\_ \$ \_\_\_\_\_

- e. Other Class One Claims (if any) (describe): \_\_\_\_\_ \$ \_\_\_\_\_

[ ] None

B. Class Two - Defaults

1. Class Two A (if none, indicate) - Claims set forth below are secured only by an interest in real property that is the debtor's principal residence located at \_\_\_\_\_ (street address, city, state, and zip) \_\_\_\_\_. Defaults shall be cured and regular payments shall be made:

[ ] None

Creditor	Total Default Amount to be Cured <sup>1</sup>	Interest Rate	Total Amount to Cure Arrearage	No. of Months to Cure	Regular Payment per _____ (i.e. month, week, etc.) to be Made Directly to Creditor and Date of First Payment

2. Class Two B (if none, indicate) - Pursuant to 11 U.S.C. § 1322(b)(5), secured (other than claims secured only by an interest in real property that is the debtor's principal residence) or unsecured claims set forth below on which the last payment is due after the date on which the final payment under the Plan is due. Defaults shall be cured and regular payments shall be made:

[ ] None

Creditor	Collateral	Total Default Amount to be Cured <sup>2</sup>	Interest Rate	Total Amount to Cure Arrearage	No. of Months to Cure	Regular Payment per _____ (i.e. month, week, etc.) to be Made Directly to Creditor and



Date of First  
Payment

3. **Class Two C - Executory contracts and unexpired leases.** Executory contracts and unexpired leases are rejected, except the following which are assumed:  
[ ] None

Other Party to Lease or Contract	Property, if any, Subject to the Contract or Lease	Total Amount to Cure, if any	No. of Months to Cure	Regular Monthly Payment Made Directly to Creditor and Date of Payment

IN THE EVENT THAT DEBTOR REJECTS THE LEASE OR CONTRACT, CREDITOR SHALL FILE A PROOF OF CLAIM OR AMENDED PROOF OF CLAIM REFLECTING THE REJECTION OF THE LEASE OR CONTRACT WITHIN 30 DAYS OF THE ENTRY OF THE ORDER CONFIRMING THIS PLAN, FAILING WHICH THE CLAIM MAY BE BARRED.

C. **Class Three - All other allowed secured claims** (other than those designated in Classes Two A and Two B above) shall be divided into separate classes to which 11 U.S.C. § 506 shall or shall not apply as follows:

1. **Secured claims subject to 11 U.S.C. § 506 (Real Property): Real Property:** In accordance with FED. R. BANKR. P. 3012, 7004 and L.B.R. 3012-1, the debtor has filed and served a separate motion for valuation of collateral and determination of secured status under 11 U.S.C. § 506 as to the *real* property and claims listed on page 1 of this plan and below. The debtor is requesting an order that the value of the collateral is zero (\$0) and the creditor's claim is unsecured. The plan is subject to the court's order on the debtor's motion. If the court grants the debtor's motion, the creditor will have an unsecured claim in either the amount of the debt as listed in the debtor's schedules or on any allowed proof of claim filed by the creditor (whichever is greater). The creditors listed on page 1 and below shall retain the liens securing their claims *until discharge under 11 U.S.C. § 1328 or payment in full.*

Name of Creditor	Description of Collateral (pursuant to L.B.R. 3012-1)	Amount of Debt as Scheduled	Proof of Claim amount, if any

2. **Secured claims subject to 11 U.S.C. § 506 (Personal Property):** The debtor moves the court, through this chapter 13 plan, for a valuation of collateral and determination of secured status under 11 U.S.C. § 506 regarding the *personal* property and claims below. The following creditors shall retain the liens securing their claims *until discharge under 11 U.S.C. § 1328 or payment in full under nonbankruptcy law*, and they shall be paid the amount specified which represents the lesser of: (a) the value of their interest in collateral or (b) the remaining balance

payable on the debt over the period required to pay the sum in full. Any remaining portion of the allowed claim shall be treated as a general unsecured claim. Any secured claim with a value of \$0 shall be treated as a general unsecured claim.

Creditor	Description of Collateral	Specify Treatment (select a or b in paragraph 2 above)	Debtor's Contention of Value (replacement value)	Amount of Debt as Scheduled	Interest Rate	Total Amount Payable

**3. Secured claims to which 11 U.S. C. § 506 shall not apply (personal property).** The following creditors shall retain the liens securing their claims, and they shall be paid the amount specified which represents the remaining balance payable on the debt over the period required to pay the sum in full:

Creditor	Description of Collateral	Amount of Debt as Scheduled	Interest Rate	Total Amount Payable

**4. Property being surrendered:** The debtor surrenders the following property securing an allowed secured claim to the holder of such claim:

Creditor	Property	Anticipated Date of Surrender

Relief from the automatic stay to permit enforcement of the liens encumbering surrendered property shall be deemed granted by the Court at the time of confirmation of this Plan. With respect to property surrendered, no distribution on the creditor's claim shall be made unless that creditor files a proof of claim or an amended proof of claim to take into account the surrender of the property.

**5. Adequate Protection:** The following creditor(s) shall receive payments in the nature of adequate protection pursuant to L.B.R. 2083-1, if applicable, or upon confirmation of the plan as follows:

Creditor	Collateral	Adequate Protection Payment Paid Through the Trustee	Adequate Protection Payment Paid By the debtor(s)	Total Payable Monthly in Equal Periodic Payments

**IF DEBTOR IS PROPOSING TO MODIFY THE RIGHTS OF CREDITORS IN CLASS TWO AND/OR THREE, DEBTOR MUST SPECIFICALLY SERVE SUCH CREDITOR IN THE MANNER SPECIFIED IN FED. R. BANKR. P. 9014 AND 7004.**

**D. Class Four - Allowed unsecured claims not otherwise referred to in the Plan.** Class Four Claims are provided for in an amount not less than the greater of:

- 1. The amount necessary to meet the best interests of creditors pursuant to 11 U.S.C. § 1325(a)(4) as set forth in Part II; or
- 2. Total disposable income for the applicable commitment period defined by 11 U.S.C. § 1325(b)(1)-(4).

The monthly disposable income of \$\_\_\_\_\_ has been calculated on Form B22C (Chapter 13). Total disposable income is \$\_\_\_\_\_ which is the product of monthly disposable income of \_\_\_\_\_ times the applicable commitment period of \_\_\_\_\_.

a. ☐ Class Four claims are of one class and shall be paid pro rata the sum of \$\_\_\_\_\_ and shall be paid all funds remaining after payment by the Trustee of all prior classes; or

A timely filed claim, found by the Court to be non-dischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), or (6), will share pro-rata in the distribution to Class Four. Collection of the balance is stayed until the case is dismissed, converted to a Chapter 7 or discharge enters, unless ordered otherwise.

b. ☐ Class Four claims are divided into more than one class as follows:

**E. Class Five (if none, indicate) - Post-petition claims allowed under 11 U.S.C. § 1305.** Post-petition claims allowed under 11 U.S.C. § 1305 shall be paid as follows:

☐ None

**V. OTHER PROVISIONS**

A. Payment will be made directly to the creditor by the debtor(s) on the following claims:

Creditor	Collateral, if any	Monthly Payment Amount	No. of Months to Payoff

B. The effective date of this Plan shall be the date of entry of the Order of Confirmation.

C. Order of Distribution:

1. ☐ The amounts to be paid to the Class One creditors shall be paid in full, except that the Chapter 13 Trustee's fee shall be paid up to, but not more than, the amount accrued on actual payments made to date. After payment of the Class One creditors, the amounts to be paid to cure the defaults of the Class Two A, Class Two B and Class Two C creditors shall be paid in full before distributions to creditors in Classes Three, Four, and Five (strike any portion of this sentence which is not applicable). The amounts to be paid to the Class Three creditors shall be paid in full before distributions to creditors in Classes Four and Five. Distributions under the plan to unsecured creditors will only be made to creditors whose claims are allowed and are timely filed pursuant to Fed. R. Bankr. P. 3002 and 3004 and after payments are



made to Classes One, Two A, Two B, Two C and Three above in the manner specified in Section IV.

2. ☐ Distributions to classes of creditors shall be in accordance with the order set forth above, except:

**D. Motions to Void Liens under 11 U.S.C. § 522(f).** In accordance with Fed. R. Bankr. P. 4003(d), the debtor intends to file or has filed, by separate motion served in accordance with Fed. R. Bankr. P. 7004, a motion to void lien pursuant to 11 U.S.C. § 522(f) as to the secured creditors listed below:

Creditor	Collateral, if any	Date Motion to ~ Void Lien Filed	Date of Order Granting Motion or Pending
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**E. Student Loans:**

☐ No student loans

☐ Student loans are to be treated as an unsecured Class Four claim or as follows:

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**F. Restitution:**

☐ No restitution owed.

☐ Debtor owes restitution in the total amount of \$\_\_\_\_\_ which is paid directly to \_\_\_\_\_ in the amount of \$\_\_\_\_\_ per month for a period of \_\_\_\_\_ months.

☐ Debtor owes restitution to be paid as follows:

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**G. Other** (list all additional provisions here):

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**VI. REVESTMENT OF PROPERTY IN DEBTOR**

All property of the estate shall vest in the debtor at the time of confirmation of this Plan.

**VII. INSURANCE**

Insurance in an amount to protect liens of creditors holding secured claims is currently in effect and will ☐ will not ☐ (check one) be obtained and kept in force throughout the period of the Plan.

Creditor to Whom This Applies	Collateral Covered	Coverage Amount	Insurance Company, Policy No. and Agent Name, Address and Telephone No.
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☐ Applicable policies will be endorsed to provide a clause making the applicable creditor a loss payee of the policy.

**VIII. POST-CONFIRMATION MODIFICATION**

The debtor must file and serve upon all parties in interest a modified plan which will provide for allowed priority and allowed secured claims which were not filed and/or liquidated at the time of confirmation. The value of property to satisfy 11 U.S.C. § 1325(a)(4) may be increased or reduced with the modification if appropriate. The modification will be filed no later than one year after the petition date. Failure of the debtor to file the modification may be grounds for dismissal.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Signature of debtor

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Signature of joint debtor

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

**Commentary**

The entire Chapter 13 Plan must be completed and filed with the original and each amended chapter 13 plan. Do not delete any provision of this form. Mark provisions that do not apply as n/a. Other than expressing a more detailed structure for future earnings and payments in Part III.A.1., no other modifications are allowed and any additional non-contradictory provisions must be recited in Part V. G.

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LOCAL BANKRUPTCY FORM 3015-1.2.

NOTICE OF FILING OF CHAPTER 13 PLAN, DEADLINE FOR FILING  
OBJECTIONS THERETO, AND HEARING ON CONFIRMATION

[Caption as in Bankruptcy Official Form No. 16B]

NOTICE OF FILING OF CHAPTER 13 PLAN, DEADLINE FOR FILING  
OBJECTIONS THERETO, AND HEARING ON CONFIRMATION

OBJECTION DEADLINE: (month/day/year) .

NOTICE IS HEREBY GIVEN that the debtor filed a Chapter 13 Plan on (month/day/year) . A copy of the Chapter 13 Plan is attached. A hearing on confirmation of debtor's Chapter 13 Plan will be held on (month/day/year) at (time) in Courtroom ( ) , United States Bankruptcy Court, 721 19th Street, Denver, Colorado 80202.

The last day to file an Objection to the plan is the objection deadline stated above. Objections to the Chapter 13 Plan must comply with L.B.R. 3015-1(e) and must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the court.

If objections are filed, objecting parties and the debtor may receive a supplemental hearing notice from the judge assigned to this case regarding whether the hearing on confirmation will be telephonic or conducted in person. If an objecting party and the debtor do not receive additional information, they should appear in person on the hearing date specified in this notice.

Unless a written objection is filed, the Chapter 13 Plan may be confirmed without a hearing, upon the debtor's filing of a Verification of Confirmable Plan pursuant to Local Bankruptcy Rule 3015-1 and L.B. Form 3015-1.4.

This Notice pertains only to the Chapter 13 Plan. Creditors should also review the Notice of Meeting of Creditors, at docket number , for additional information and deadlines, including those related to objecting to dischargeability of certain debts, objecting to exemptions, and filing a proof of claim.

Dated:

By:   
Counsel to   
Attorney registration number (if applicable)   
Business address (or home address for pro se)   
Telephone number   
Facsimile number   
E-mail address

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she served a true and correct copy of the Notice of Filing Chapter 13 Plan, Deadline for Filing Objections Thereto, and Hearing on Confirmation by placing the same in the United States Mail, first class postage pre-paid, this (month/day/year) to the following:

Commentary

All deadlines and hearing dates and times should be provided in bold type face.

The objection deadline is three (3) court days before the first scheduled meeting of creditors pursuant to FED. R. BANKR. P. 2002(b) and 9006(c) and L.B.R. 3015-1.

This form may be used if the chapter 13 plan is filed after the petition date or after the date of conversion to chapter 13, or if creditors are added to the schedules after the petition



date. In lieu of using this form, the debtor may serve a copy of the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines, and Notice of Hearing on Confirmation of Chapter 13 Plan.

If L.B. Form 3015-1.2 is being used to provide notice of a Chapter 13 Plan that is being filed after the petition date, then this form must be served on the following: chapter 13 trustee, debtor, all creditors and parties in interest, and parties requesting notice, or as otherwise ordered by the court.

If L.B. Form 3015-1.2 is being used to provide notice of a Chapter 13 Plan to creditors added to the schedules after the petition date, then this form must be served on the added creditors. The debtor must also serve added creditors with the Notice of Meeting of Creditors.

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LOCAL BANKRUPTCY FORM 3015-1.3.

NOTICE OF CONTINUED DATES FOR MEETING OF CREDITORS  
AND HEARING ON CONFIRMATION OF PLAN

[Caption as in Bankruptcy Official Form No. 16B]

NOTICE OF CONTINUED DATES FOR MEETING OF CREDITORS  
AND HEARING ON CONFIRMATION OF PLAN

TO ALL PARTIES OF INTEREST:

The following dates have changed from the dates set forth in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines which was dated (month/day/year) .

The 11 U.S.C. § 341 Meeting of Creditors previously scheduled for (month/day/year) at (time) has been continued to (month/day/year) at (time) . The Meeting of Creditors will be held at (location) .

The hearing on confirmation of the debtor's plan previously scheduled for (month/day/year) at (time) has been continued by order of the Court (Docket No. \_\_\_\_\_) to (month/day/year) at (time) . The Confirmation Hearing will be held at U.S. Custom House, 721 19th Street, Courtroom (\_\_\_\_) , Fifth Floor, Denver, Colorado 80202.

Objections to confirmation of the plan, the debtor's Certificate and Motion to Determine Notice, and the debtor's Verification of Confirmable Plan must be timely filed pursuant to L.B.R. 3015-1 or as otherwise ordered by the Court. Objections to the Chapter 13 Plan must comply with L.B.R. 3015-1(e) and must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the court.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she served a true and correct copy of the Notice of Continued Dates for Meeting of Creditors and Hearing on Confirmation of Plan by placing the same in the United States Mail, first class postage pre-paid this (month/day/year) to the following:

Commentary

All deadlines and hearing dates and times should be provided in bold type face.

L.B. Form 3015-1.3 is for use when the debtor's meeting of creditors is continued to a date *beyond* the original hearing on confirmation date. The debtor must file a motion to continue the hearing on confirmation or appear at the originally scheduled date for the hearing on confirmation. See L.B.R. 3015-1(d).

L.B. Form 3015-1.3 must be served on the following: chapter 13 trustee, debtor, all creditors and parties in interest, and parties requesting notice, or as otherwise ordered by the court.

**LOCAL BANKRUPTCY FORM 3015-1.4.**

## VERIFICATION OF CONFIRMABLE PLAN

[Caption as in Bankruptcy Official Form No. 16B]

## VERIFICATION OF CONFIRMABLE PLAN

The debtor moves for the court for an order (1) confirming the chapter 13 plan filed on \_\_\_\_\_ (month/day/year), (docket no. \_\_\_\_\_), and, if applicable, (2) valuing the collateral of secured creditors to be paid through the plan pursuant to 11 U.S.C. § 506. In support thereof, the debtor verifies the following:

The debtor hereby verifies the following:

(i) the docket number for the applicable plan now pending confirmation is docket no. \_\_\_\_\_ and the certificate of service filed related to the plan is docket no. \_\_\_\_\_;

(ii) the debtor is current or substantially current (less than 30 days in arrears) with plan payments to the chapter 13 trustee.

(iii) there were no objections filed, or any objections to plan confirmation have been withdrawn by the objector in writing or otherwise overruled by the court, and the plan may be confirmed without further notice or hearing;

(iv) the debtor has paid all amounts required to be paid under domestic support obligations that became payable after the date of the filing of the petition or the debtor has no domestic support obligations;

(v) the debtor has filed all tax returns required under 11 U.S.C. § 1308;

(vi) all statements in the plan to be confirmed are true and correct and the plan contains sufficient facts to allow confirmation; and

(vii) The debtor (or the court, as applicable) has provided appropriate notice of the plan and any amendments, serving them as required under L.B.R. 3015-1, FED. R. BANKR. P. 2002(b), 9014 and 7004, and 11 U.S.C. § 342(e) and (f), or as otherwise ordered by the court.

WHEREFORE, the debtor requests that the court enter an order confirming the plan. A proposed order for confirmation in substantial conformity with L.B. Form 3015-1.9 is attached hereto.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she served a true and correct copy of the Verification of Confirmable Plan by placing the same in the United States Mail, first class postage pre-paid, this (month/day/year) to the following:

## Commentary

Unless otherwise ordered by the court, L.B. Form 3015-1.4 must be served on the following: If no objections are filed, the Verification of Confirmable Plan must be served on the chapter 13 trustee and any parties requesting notice. If objections are filed, the Verification of Confirmable Plan must be served on the chapter 13 trustee, any parties who objected to the most recently noticed plan, and those requesting notice.



LOCAL BANKRUPTCY FORM 3015-1.5.

CERTIFICATE AND MOTION TO DETERMINE NOTICE

[Caption as in Bankruptcy Official Form No. 16B]

CERTIFICATE AND MOTION TO DETERMINE NOTICE

(Complete Applicable Paragraphs)

This certificate pertains to the debtor’s chapter 13 plan dated (month/day/year), at docket no. (the last plan to be noticed and served) and the debtor’s amended chapter 13 plan dated (month/day/year), at docket no. (the amended plan now pending confirmation).

The debtor, by and through counsel, (name of counsel), submits the following certificate pursuant to L.B.R. 3015-1 and states as follows:

1. The debtor filed for chapter 13 relief on (month/day/year). The debtor attended his/her 11 U.S.C. § 341(a) Meeting of Creditors on (month/day/year).

NO OBJECTIONS

2. No objections have been filed to the debtor’s plan dated (month/day/year), at docket no. (the last plan to be noticed and served).

OBJECTIONS

3. The following objections have been filed to the debtor’s plan dated (month/day/year), at docket no. (the most recent noticed plan).

(name of objecting party and docket number of objection)  
(name of objecting party and docket number of objection)

4. The debtor has complied with the “Meet and Confer” requirement of L.B.R. 3015-1. The debtor or counsel has conferred with the attorney for the chapter 13 trustee [and/or the objecting party] regarding the objections to confirmation.

AMENDED PLAN

5. The debtor has filed an amended plan, dated (month/day/year), at docket no. (the amended plan now pending). The amended plan is captioned, “Debtor’s (first/second) Amended Plan.”

The amended plan makes the following changes which are delineated in the amended plan by an asterisk, underscoring or highlighting (list the precise nature of the amendment(s) to the plan, including changes in the duration of the plan, monthly plan payments, amount received by any Class, etc.):

- a.
- b.
- c.

6. The (first/second) amended plan is intended to [ ] cure deficiencies in the prior plan, [ ] resolve all of the objections filed or [ ] resolve the following objections:

- a.
- b.
- c.

7. The (first/second) amended plan does not resolve all of the objections and the debtor requests judicial determination of the remaining objections. The precise issues remaining for judicial determination are as follows:

- a.
- b.
- c.

The debtor anticipates the expected court time necessary to determine this contested matter will be \_\_\_\_\_ minutes/hours.

The debtor anticipates \_\_\_\_\_ fact witnesses and/or \_\_\_\_\_ expert witnesses will be called to testify in this contested matter at any evidentiary hearing to be conducted by the court.

**NO AMENDED PLAN**

8. The debtor does not intend to file an amended plan and requests judicial determination of all objections filed.

The debtor anticipates the expected court time necessary to determine this contested matter will be \_\_\_\_\_ minutes/hours.

The debtor anticipates \_\_\_\_\_ fact witnesses and/or \_\_\_\_\_ expert witnesses will be called to testify in this contested matter at any evidentiary hearing to be conducted by the court.

**MOTION TO DETERMINE NOTICE OF AMENDED PLAN**

**9. Notice [check the applicable box]:**

☐ **Notice to all creditors:** The debtor believes notice of the amended plan must be served on the chapter 13 trustee and to all creditors and parties in interest.

☐ **Request to waive or limit notice:** The debtor requests notice of the amended plan be limited or waived for the following reasons (describe reason and list the parties the debtor believes should receive notice):

**10. Objection Time Period [check applicable box]:**

☐ **Objection Deadline Pursuant to FED. R. BANKR. P. 2002(b):** The debtor believes notice of the amended plan should be for the full objection period set forth in FED. R. BANKR. P. 2002(b).

☐ **Request to Shorten Objection Time Period:** The debtor requests the objection period set forth in FED. R. BANKR. P. 2002(b) be shortened to \_\_\_\_\_ days (describe reason for requested objection period):

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the Certificate and Motion to Determine Notice was served by placing the same in the United States Mail, first class postage pre-paid, this \_\_\_\_\_ (month/day/year) to the following:

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Commentary

L.B. Form 3015-1.5 must be served on the following: the chapter 13 trustee, debtor, any parties who objected to the most recently noticed plan, and those requesting notice, or as otherwise ordered by the court.

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**LOCAL BANKRUPTCY FORM 3015-1.6.**

**NOTICE OF FILING AMENDED CHAPTER 13 PLAN PRIOR TO  
HEARING ON CONFIRMATION AND DEADLINE FOR FILING  
OBJECTIONS THERETO**

[Caption as in Bankruptcy Official Form No. 16B]

**NOTICE OF FILING AMENDED CHAPTER 13 PLAN PRIOR TO HEARING  
ON CONFIRMATION AND DEADLINE FOR FILING OBJECTIONS THERETO**

**OBJECTION DEADLINE:**           (month/day/year)          .

YOU ARE HEREBY NOTIFIED that the debtor filed an amended chapter 13 plan on \_\_\_\_\_ (month/day/year), docket number \_\_\_\_\_. A copy of the amended chapter 13 plan is attached.

A hearing on confirmation has been set for           (month/day/year)           at           (time)          . The hearing will be held at the U.S. Bankruptcy Court, U.S. Custom House, 721 19th Street, Courtroom (\_\_\_\_), Fifth Floor, Denver, Colorado 80202.

If you wish to oppose confirmation of the amended chapter 13 plan you must file a written objection and request for a hearing with the court on or before the objection deadline stated above and serve a copy thereof on the undersigned attorney. Pursuant to L.B.R. 3015-1, objections must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the court.

Unless otherwise ordered, previously filed objections to any prior chapter 13 plan are deemed moot and new objections must be timely filed addressing this amended plan.

If no objections are filed, the amended plan may be confirmed without a hearing, but only upon the debtor's filing of a Verification of Confirmable Plan pursuant to L.B.R. 3015-1.

Please check the chambers' webpage of the judge to whom this case is assigned to determine whether you must appear in person at the hearing or may appear by telephone and the process for doing so.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Amended Chapter 13 Plan dated           (month/day/year)          , docket no.       , and the Notice of Filing Amended Chapter 13 Plan Prior to Hearing on Confirmation and Deadline for Objections Thereto was served by placing the same in the United States Mail, first class postage pre-paid, this           (month/day/year)           to the following:

## Commentary

All deadlines and hearing dates and times should be provided in bold type face.

L.B. Form 3015-1.6 is used to provide notice of an amended chapter 13 plan that is filed and served following the 11 U.S.C. § 341 Meeting of Creditors and the completion of the obligation to meet and confer, as applicable, and prior to the date of the first scheduled hearing on confirmation pursuant to L.B.R. 3015(f)(2)(E) and (g)(3)(E).

The date and time for the hearing on confirmation is the same date set forth in the Notice of Meeting of Creditors, unless otherwise ordered by the court.

The objection deadline must be twenty-one (21) days after the mailing of the amended plan and notice or as otherwise ordered by the court.

L.B. Form 3015-1.6 must be served on the following: chapter 13 trustee, debtor and all creditors and parties in interest, or as otherwise ordered by the court.

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L.B. Form 3015-1.7 must be served on the following: chapter 13 trustee, debtor and all creditors and parties in interest, or as otherwise ordered by the court.

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**LOCAL BANKRUPTCY FORM 3015-1.8.**

**NOTICE OF FILING AMENDED CHAPTER 13 PLAN,  
DEADLINE FOR FILING OBJECTIONS, AND  
HEARING ON CONFIRMATION**

[Caption as in Bankruptcy Official Form No. 16B]

**NOTICE OF FILING AMENDED CHAPTER 13 PLAN, DEADLINE FOR  
FILING OBJECTIONS, AND HEARING ON CONFIRMATION**

**OBJECTION DEADLINE:** (month/day/year) .

YOU ARE HEREBY NOTIFIED that the debtor filed an amended chapter 13 plan on \_\_\_\_\_ (month/day/year), docket number \_\_\_\_\_. A copy of the amended chapter 13 plan is attached.

A (non-evidentiary/evidentiary) hearing on confirmation has been set for (month/day/year) at (time) at the U. S. Bankruptcy Court, U.S. Custom House, 721 19th Street, Courtroom ( ), Fifth Floor, Denver, Colorado 80202.

If you wish to oppose confirmation of the amended chapter 13 plan you must file with the court a written objection and request for a hearing on or before the objection deadline stated above, and serve a copy thereof on the undersigned attorney. Pursuant to L.B.R. 3015-1, objections must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the court.

Unless otherwise ordered, previously filed objections to any prior chapter 13 plan are deemed moot and new objections must be timely filed addressing this amended plan.

If no objections are filed, the amended plan may be confirmed without a hearing, upon the debtor's filing of a Verification of Confirmable Plan pursuant to L.B.R. 3015-1.

[If evidentiary] If objections to confirmation are filed, witness and exhibit lists must be filed and exhibits exchanged by                     (month/day/year)                     \* pursuant to L.B.R. 9070-1.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Amended Chapter 13 Plan dated \_\_\_\_\_ (month/day/year) \_\_\_\_\_, docket no. \_\_\_\_\_, and the Notice of Filing Amended Chapter 13 Plan, Deadline for Filing Objections Thereto, and Hearing on Confirmation were served by placing the same in the United States Mail, first class postage pre-paid, this \_\_\_\_\_ (month/day/year) \_\_\_\_\_, to the following:

## Commentary

All deadlines and hearing dates and times should be provided in bold type face.

L.B. Form 3015-1.8 may be used to provide notice of an amended chapter 13 plan if the court has provided the debtor with a new objection date and new hearing on confirmation date.

L.B. Form 3015-1.8 must be served on the following: chapter 13 trustee, debtor and all creditors and parties in interest, or as otherwise ordered by the court.

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**LOCAL BANKRUPTCY FORM 3015-1.9.****CHAPTER 13 CONFIRMATION ORDER**

[Caption as in Bankruptcy Official Form No. 16B]

**CHAPTER 13 CONFIRMATION ORDER**

IT HAVING BEEN DETERMINED AFTER NOTICE AND A HEARING:

1. That the plan complies with chapter 13 and all other applicable provisions of Title 11, United States Code;
2. That any fee, charge, or amount required under Chapter 123 of Title 28, United States Code, or by the plan, to be paid before confirmation, has been paid;
3. That the action of the debtor(s) in filing the petition was in good faith;
4. That the plan has been proposed in good faith and not by any means forbidden by law;
5. That the value, as of the effective date of the plan, of property to be distributed under the plan on account of each unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor(s) were liquidated under chapter 7 of Title 11, United States Code on such date; and
6. That the plan complies with the provisions of 11 U.S.C. § 1325(a)(5) as to holders of secured claims.
7. That pending motions for valuation of real property collateral and determination of secured status under 11 U.S.C. § 506, if any, have been provided for by separate court order.

IT IS ORDERED:

The debtor(s)' plan, filed on           (month/day/year)          , at docket no.       , is confirmed;

The debtor(s) must make payments in accordance with the terms of the plan. Creditors holding liens on property which the plan specifies is to be surrendered by the debtor(s) are hereby granted relief from the stay imposed by 11 U.S.C. § 362 and may enforce their rights in and to said property.

The assumption of executory contracts on the terms stated in the plan is approved. If the plan provides for the rejection of an executory contract or unexpired lease, the party to the rejected executory contract or lease must file a proof of claim within 30 days of the date of the entry of this order, failing which the claim may be barred.

Any hearing on confirmation is VACATED.

This order binds those creditors and parties in interest that have been served in accordance with applicable rules.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

**LOCAL BANKRUPTCY FORM 3015-1.10.****ORDER MODIFYING CONFIRMED CHAPTER 13 PLAN**

[Caption as in Bankruptcy Official Form No. 16B]

**ORDER MODIFYING CONFIRMED CHAPTER 13 PLAN**

THIS MATTER having come before the court on the Motion to Modify Confirmed Chapter 13 Plan filed by \_\_\_\_\_ (name of movant) on \_\_\_\_\_ (month/day/year), at docket no. \_\_\_\_\_. Proper notice having been given and no objections having been filed or any objections filed having been withdrawn, it is hereby

ORDERED that the Motion to Modify Confirmed Chapter 13 Plan is GRANTED. The Modified Chapter 13 Plan dated \_\_\_\_\_ (month/day/year), at docket no. \_\_\_\_\_ is approved. This order binds those creditors and parties in interest that have been properly served. The debtors must make payments as specified by the plan as modified.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

**LOCAL BANKRUPTCY FORM 3015-1.11.****CHAPTER 13 DEBTOR'S CERTIFICATION TO OBTAIN DISCHARGE  
PURSUANT TO 11 U.S.C. § 1328**

[Caption as in Bankruptcy Official Form No. 16B]

**CHAPTER 13 DEBTOR'S CERTIFICATION TO OBTAIN DISCHARGE  
PURSUANT TO 11 U.S.C. § 1328**I,                      (debtor's name), certify that: (check the appropriate statements)**1. Plan Payments:**☐ I have completed all payments and obligations required by my Chapter 13 Plan.**2. Domestic Support Obligations:**☐ I have no domestic support obligations.☐ During the pendency of this bankruptcy case, I have paid all domestic support obligations that have become due under any order of a court, administrative agency, or by any statute.☐ I have provided the chapter 13 trustee with the information required for notice by 11 U.S.C. § 1302(d)(1)(c).**3. Valuation of Collateral Pursuant to 11 U.S.C. § 506**☐ I previously filed a *Motion for Valuation of Collateral and Determination of Secured Status Under 11 U.S.C. § 506* (the "Motion") (docket no.         ) as to the real property described below. The Motion was granted on          (month/day/year), (docket no.         ).**4. Felony convictions under 11 U.S.C. § 522(q)(1) and 11 U.S.C. § 1328(h).**☐ I have not been convicted of a felony (as defined in section 3156 of title 18). See 11 U.S.C. § 522(q)(1)(A).☐ There are no pending proceedings in which I may be found guilty of a felony of the kind described in Section 522(q)(1)(A) or liable for a debt of the kind described in Section 522(q)(1)(B).**5. Personal Financial Management Course**☐ I have completed an instructional course in personal financial management and the certification of completion has been filed.**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury that I have read the foregoing statement and that it is true and correct to the best of my knowledge, information, and belief.

Dated:                                 By:     
Signature of debtor    
Printed name of debtor

Home address

Telephone number

Facsimile number

E-mail address

**CERTIFICATE OF SERVICE**The undersigned hereby certifies that a true and correct copy of the Chapter 13 Debtor's Certification to Obtain Discharge was served by placing the same in the United States Mail, first class postage pre-paid, this          (month/day/year) to the following:



**Commentary**

Pursuant to 11 U.S.C. § 1328, this form is to be completed as soon as practicable after completion by the debtor of all payments under the plan. This form must be completed and filed with the court in order for the debtor to receive a discharge. In joint cases, the form must be completed and filed by each debtor.

L. B. Form 3015.11 must be served on the following: chapter 13 trustee, debtor and any parties in interest, or as otherwise ordered by the court.

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**LOCAL BANKRUPTCY FORM 3015-1.12.****ORDER ON CHAPTER 13 DEBTOR'S  
CERTIFICATION TO OBTAIN DISCHARGE**

[Caption as in Bankruptcy Official Form No. 16B]

**ORDER ON CHAPTER 13 DEBTOR'S CERTIFICATION TO OBTAIN  
DISCHARGE**

**THIS MATTER COMES BEFORE THE COURT** on the Debtor's Certification to Obtain Discharge (Docket no. \_\_\_\_\_) and this Court's prior Order Granting Motion for Valuation of Collateral and Determination of Secured Status (Docket No. \_\_\_\_\_).

This Court previously ordered that the lien held by \_\_\_\_\_ (name of creditor) on \_\_\_\_\_ (description of property) is valued at zero (\$0) and is entirely unsecured for purposes of the debtor's chapter 13 plan. The debtor has successfully completed all plan payments and the debtor's discharge is ready to enter.

IT IS HEREBY ORDERED that upon entry of the debtor's discharge,  
The lien held by \_\_\_\_\_ (name of creditor) on \_\_\_\_\_ (description of property) is extinguished.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge**Commentary**

[Source: New.]

Due to modification of the discharge form, this form of order is no longer needed. In the explanation portion of the discharge form the following information has been added: "Pursuant to 11 U.S.C. §506(d), if an Order entered in this case valuing a creditor's secured claim at \$0, the lien is extinguished by operation of law upon entry of the debtor's discharge."

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## ORDER RE: SMALL BUSINESS PLAN AND DISCLOSURE STATEMENT, AND NOTICE OF DEADLINES

## ORDER RE: SMALL BUSINESS PLAN AND DISCLOSURE STATEMENT, AND NOTICE OF DEADLINES

I. Witnesses and Exhibits: (Insert specific instructions here or refer parties to L.B.R. 9070-1).



Dated: \_\_\_\_\_ BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

**Commentary**

[Source: Director’s Procedural Form B13S (Form 13S) (08/07)]

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**LOCAL BANKRUPTCY FORM 3017-2.1.****ORDER RE: SMALL BUSINESS PLAN WITHOUT SEPARATE DISCLOSURE  
STATEMENT AND NOTICE OF DEADLINES**

[Caption as in Bankruptcy Official Form 16A]

**ORDER RE: SMALL BUSINESS PLAN WITHOUT SEPARATE DISCLOSURE  
STATEMENT AND NOTICE OF DEADLINES**

The debtor is a "small business debtor" as that term is defined in 11 U.S.C. § 101(51D). On           (month/day/year)          , the debtor filed a motion pursuant to 11 U.S.C. § 1125(f)(1) requesting that the court determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary. The court has reviewed the plan and has preliminarily determined that the plan itself provides adequate information and that a separate disclosure statement is not necessary. Therefore, it is

ORDERED, and notice is hereby given, that:

A. The plan filed by the debtor (or other plan proponent) provides adequate information and a separate disclosure statement is not necessary, subject to final determination after notice and a hearing.

B. On or before           (month/day/year)          , counsel for the debtor must file with the court and serve the plan, a copy of this order and a suitable ballot for accepting or rejecting the plan on all creditors, equity security holders, and other parties in interest as provided in FED. R. BANKR. P. 3017(d).

C. On or before           (month/day/year)          , counsel for the debtor must file with this court a certificate of service as to the plan, order and ballot.

D.           (month/day/year)          , is fixed as the last day for filing written acceptances or rejections of the plan referred to above.

E.           (month/day/year)          , is fixed as the last day for filing and serving written objections to the information and disclosures contained in the plan and confirmation of the plan pursuant to FED. R. BANKR. P. 3020(b)(1).

F. On or before           (month/day/year)          , counsel for the debtor must prepare and file with this court, a summary report on the ballots. The report must reflect the name of the creditor by class as designated in the plan, the acceptance, rejection, or if no vote cast by the creditor, the amount of each creditor's claim or amount of each creditor's vote. The report must be summarized by each class of creditor established in the plan and must indicate if the number of acceptances obtained were by the holders of two-thirds in amount and more than one-half in number of claims in each class voting on the plan. The report must also identify and respond to any timely-filed objections to confirmation. A copy of the report must be served on the United States Trustee, each member of the Unsecured Creditors' Committee and counsel for the Unsecured Creditors' Committee, and any party objecting to confirmation of the plan or to the disclosure statement. The original report as filed with the Clerk must have a certificate of service reflecting proper service on the parties as indicated.

G. The hearing on confirmation of the plan is scheduled as follows:

DATE:

TIME:

COURTROOM:

H. Witnesses and Exhibits: (Insert specific instructions here or refer parties to L.B.R. 9070-1).

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

Commentary

[Source: Director's Procedural Form B13S (Form 13S) (08/07)]

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**LOCAL BANKRUPTCY FORM 3022-1.1.****CHAPTER 11 FINAL REPORT AND MOTION FOR FINAL DECREE**

[Caption as in Bankruptcy Official Form 16A]

**CHAPTER 11 FINAL REPORT AND MOTION FOR FINAL DECREE**

(chapter 11 business debtor)

Comes now the debtor \_\_\_\_\_, by and through its undersigned attorney, and pursuant to the provisions of 11 U.S.C. § 1106(a)(7) as order by this court, and submits that the estate herein is fully administered and that the plan has been substantially consummated as follows:

1. That the order confirming the plan has become final;
2. That the deposits required by the plan have been distributed in accordance with the provisions of the plan as shown in Schedule A attached hereto;
3. That substantially all of the property of the debtor has been transferred according to the provisions of the plan as shown in Schedule B attached hereto;
4. That the debtor or the successor has assumed the business or the management of the property dealt with by the plan as applicable;
5. That distribution has been commenced under the plan, and that payments to creditors and other interested parties have been undertaken as shown in Schedule C attached hereto; and
6. That all motions, contested matters, and adversary proceedings have been finally resolved.

WHEREFOR the debtor herein prays for the entry of the Final Decree pursuant to FED.R.BANKR.P. 3022, finding that the estate has been fully administered and, therefore, ordering the closing of the case.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Representative of the Debtor

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
*Counsel to* \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

Debtor: \_\_\_\_\_  
Case No.: \_\_\_\_\_

SCHEDULE A

Nature and amount of deposits distributed in accordance with the provisions of the plan:

Nature of Deposit	Amount	Distribution

Debtor: \_\_\_\_\_  
Case No.: \_\_\_\_\_

SCHEDULE B

The following property of the debtor has been/will be transferred according to the provisions of the plan:

Nature of Property	Value of Property	Transferred To	Date of Transfer (Actual or Estimated)

Debtor: \_\_\_\_\_  
Case No.: \_\_\_\_\_

SCHEDULE C

Payments completed under the provisions of the plan are as follows:

Administrative Payments/Fees and Taxes:

1. Trustee’s Commissions and Expenses

\$ \_\_\_\_\_
2. Accountant’s Fees

\$ \_\_\_\_\_
3. Auctioneer’s Fees

\$ \_\_\_\_\_
4. Appraiser’s Fees

\$ \_\_\_\_\_
5. Attorney’s Fees

\$ \_\_\_\_\_
- a. for creditor’s committee

\$ \_\_\_\_\_
- b. for trustee

\$ \_\_\_\_\_
- c. for debtor

\$ \_\_\_\_\_
- d. other attorney’s fees

\$ \_\_\_\_\_
6. Taxes, Fines, Penalties, etc.

\$ \_\_\_\_\_
- (11 U.S.C. § 502(b)(1)(B) & (C))

\$ \_\_\_\_\_
7. Other Non-Operating Costs of Administration

\$ \_\_\_\_\_
- (Please itemize on attached sheets)

TOTAL Administrative Payments/Fees and Taxes: \$ \_\_\_\_\_

**Other Priority Payments:**

- |   |          |
|---|----------|
| 1. Post Involuntary Petition/Pre-relief Claims  | \$ _____ |
| 2. Wages, etc.                                  | \$ _____ |
| 3. Contributions to Employee Benefit Plans      | \$ _____ |
| 4. Deposits for Undelivered Service or Property | \$ _____ |
| 5. Taxes (11 U.S.C. § 507(a)(6))                | \$ _____ |

TOTAL Other Priority Payments: \$ \_\_\_\_\_

**Other Payments Completed Under the Plan:**

- |                                    |          |
|------------------------------------|----------|
| 1. Payments to Secured Creditors   | \$ _____ |
| 2. Payments to Unsecured Creditors | \$ _____ |
| 3. Payments to Equity Holders      | \$ _____ |
| 4. Other Distributions             | \$ _____ |

TOTAL Other Payments Completed Under the Plan: \$ \_\_\_\_\_

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## LOCAL BANKRUPTCY FORM 3022-1.2.

## CHAPTER 11 FINAL REPORT AND MOTION FOR FINAL DECREE

[Caption as in Bankruptcy Official Form 16A]

## CHAPTER 11 FINAL REPORT AND MOTION FOR FINAL DECREE

(Chapter 11 individual debtor)

Comes now the debtor \_\_\_\_\_, by and through its undersigned attorney, and pursuant to the provisions of 11 U.S.C. § 1106(a)(7) as order by this court, and submits that the estate herein is fully administered and that all payments under the plan have been completed as follows:

1. That the order confirming the plan has become final;
2. That the deposits required by the plan have been distributed in accordance with the provisions of the plan as shown in Schedule A attached hereto;
3. That all of the property of the debtor has been transferred according to the provisions of the plan as shown in Schedule B attached hereto;
4. That the debtor or the successor has assumed the business or the management of the property dealt with by the plan as applicable;
5. That 11 U.S.C. § 522(q)(1) is not applicable to the debtor and there are no pending proceedings in which the debtor may be found guilty of a felony described in Section 522(q)(1)(A) or liable for a debt of the kind described in Section 522(q)(1)(B).
6. That all motions, contested matters, and adversary proceedings have been finally resolved.

7. If applicable, a statement of completion of a course concerning personal financial management is attached.

8. Other relief as appropriate under the debtor's plan: \_\_\_\_\_

WHEREFOR the debtor herein prays for the entry of the Final Decree pursuant to FED.R.BANKR.P. 3022, finding that the estate has been fully administered and, therefore, ordering the closing of the case.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Debtor(s)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

Debtor: \_\_\_\_\_  
 Case No.: \_\_\_\_\_

### SCHEDULE A

Nature and amount of deposits distributed in accordance with the provisions of the plan:

Nature of Deposit	Amount	Distribution

Debtor: \_\_\_\_\_  
 Case No.: \_\_\_\_\_

### SCHEDULE B

The following property of the debtor has been transferred according to the provisions of the plan:

Nature of Property	Value of Property	Transferred To	Date of Transfer (Actual)

Debtor: \_\_\_\_\_  
 Case No.: \_\_\_\_\_

### SCHEDULE C

Payments completed under the provisions of the plan are as follows:

#### Administrative Payments/Fees and Taxes:

1. Trustee's Commissions and Expenses \$ \_\_\_\_\_
2. Accountant's Fees \$ \_\_\_\_\_
3. Auctioneer's Fees \$ \_\_\_\_\_
4. Appraiser's Fees \$ \_\_\_\_\_
5. Attorney's Fees \$ \_\_\_\_\_
  - a. for creditor's committee \$ \_\_\_\_\_
  - b. for trustee \$ \_\_\_\_\_
  - c. for debtor \$ \_\_\_\_\_
  - d. other attorney's fees \$ \_\_\_\_\_
6. Taxes, Fines, Penalties, etc. \$ \_\_\_\_\_  
 (11 U.S.C. § 502(b)(1)(B) & (C))
7. Other Non-Operating Costs of Administration \$ \_\_\_\_\_  
 (Please itemize on attached sheets)

TOTAL Administrative Payments/Fees and Taxes: \$ \_\_\_\_\_

**Other Priority Payments:**

- 1. Post Involuntary Petition/Pre-relief Claims \$ \_\_\_\_\_
- 2. Wages, etc. \$ \_\_\_\_\_
- 3. Contributions to Employee Benefit Plans \$ \_\_\_\_\_
- 4. Deposits for Undelivered Service or Property \$ \_\_\_\_\_
- 5. Taxes (11 U.S.C. § 507(a)(6)) \$ \_\_\_\_\_

TOTAL Other Priority Payments: \$ \_\_\_\_\_

**Other Payments Completed Under the Plan:**

- 1. Payments to Secured Creditors \$ \_\_\_\_\_
- 2. Payments to Unsecured Creditors \$ \_\_\_\_\_
- 3. Payments to Equity Holders \$ \_\_\_\_\_
- 4. Other Distributions \$ \_\_\_\_\_

TOTAL Other Payments Completed Under the Plan: \$ \_\_\_\_\_

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**LOCAL BANKRUPTCY FORM 3022-1.3.****FINAL DECREE**

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[Caption as in Bankruptcy Official Form 16A]

**FINAL DECREE**

(Chapter 11 business debtor)

The estate of the above-named debtor having been fully administered, it is  
ORDERED that the chapter 11 case of the above-named debtor shall be closed.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

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**LOCAL BANKRUPTCY FORM 3022-1.4.**

**FINAL DECREE**

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[Caption as in Bankruptcy Official Form 16A]

**FINAL DECREE**  
(Chapter 11 individual debtor)

The estate of the above-named debtor having been fully administered, it is ORDERED that the Clerk of Court shall issue a discharge for the debtor pursuant to 11 U.S.C. § 1141.

FURTHER ORDERED THAT ten days following the issuance of the discharge, the chapter 11 case of the above-named debtor shall be closed without further order.

Dated: \_\_\_\_\_ BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

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LOCAL BANKRUPTCY FORM 4001-1.1.

NOTICE OF MOTION FOR RELIEF FROM STAY  
AND OPPORTUNITY FOR HEARING PURSUANT TO 11 U.S.C. § 362(d)

[Caption as in Bankruptcy Official Form 16A]

NOTICE OF MOTION FOR RELIEF FROM STAY  
AND OPPORTUNITY FOR HEARING PURSUANT TO 11 U.S.C. § 362(d)

OBJECTION DEADLINE: (month/day/year) .

YOU ARE HEREBY NOTIFIED that a Motion for Relief from Stay has been filed, a copy of which is attached hereto.

A hearing on the motion has been set for (month/day/year) at (time) at the U.S. Bankruptcy Court, U.S. Custom House, 721 19th Street, Courtroom ( ), Fifth Floor, Denver, Colorado 80202. The hearing will be conducted in accordance with the provisions of L.B.R. 4001-1.

IF YOU DESIRE TO OPPOSE THIS MOTION, you must file with this court a WRITTEN OBJECTION to the motion on or before the objection deadline stated above and serve a copy upon movant’s attorney, whose address is listed below.

If you file an objection, you are REQUIRED to comply with L.B.R. 4001-1 regarding hearing procedures, including (1) the timely submission and exchange of witness lists and exhibits and (2) attendance at the above-scheduled hearing in person or through counsel, if represented.

IF YOU FAIL TO FILE AN OBJECTION, the scheduled hearing will be vacated, and an order granting the relief requested may be granted without further notice to you.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Counsel to \_\_\_\_\_

Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

Commentary

All dates or deadlines should be printed in bold type face.

\_\_\_\_\_



**LOCAL BANKRUPTCY FORM 4001-1.2.**

**MOVANT'S CERTIFICATE OF NON-CONTESTED MATTER AND  
REQUEST FOR ENTRY OF ORDER  
(RE: MOTION FOR RELIEF FROM STAY)**

[Caption as in Bankruptcy Official Form 16A]

**MOVANT'S CERTIFICATE OF NON-CONTESTED MATTER AND REQUEST  
FOR ENTRY OF ORDER (RE: MOTION FOR RELIEF FROM STAY)**

On \_\_\_\_\_ (month/day/year), \_\_\_\_\_ (name of Movant), filed a motion pursuant to Local Bankruptcy Rule 4001-1 entitled \_\_\_\_\_, (Docket No. \_\_\_\_). Movant hereby certifies and shows the court:

1. Service of the notice and motion were timely made on all parties against whom relief is sought pursuant to L.B.R. 4001-1(a), or in the manner permitted by an order of the court, (Docket no. \_\_\_\_\_), as is shown on the certificate of service previously filed with the notice.
2. A hearing on said motion/application was scheduled for \_\_\_\_\_ (month/day/year) at \_\_\_\_\_ (time) \_\_\_\_\_.
3. No objections to or requests for hearing on the motion were received by the undersigned or filed with the court or, if filed, were withdrawn.

WHEREFORE, Movant prays that the court forthwith enter an order, a form of which was submitted to the Court with the Motion (Docket No. \_\_\_\_), granting the requested relief.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

## Counsel to

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

LOCAL BANKRUPTCY FORM 4001-1.3.

ORDER ON MOTION FOR RELIEF FROM STAY

[Caption as in Bankruptcy Official Form 16A]

ORDER ON MOTION FOR RELIEF FROM STAY

\_\_\_\_\_, Movant, has filed herein a motion for relief from stay

1. ☐ to foreclose on and/or take possession and control of property described as follows:

\_\_\_\_\_.

2. ☐ to proceed with the liquidation of claims involving the debtor or the debtor's estate pursuant to certain proceedings presently pending in:

\_\_\_\_\_.

\_\_\_\_\_.

3. ☐ other: \_\_\_\_\_.

The court, being duly advised, and any objections having been resolved, withdrawn, or overruled, hereby orders that the relief sought by the motion should be granted, and \_\_\_\_\_ (Movant) \_\_\_\_\_, is hereby granted relief from stay in order to proceed to take possession of, by way of the appointment of a receiver and otherwise, and to foreclose on the collateral above described, or if applicable, to proceed with the above described litigation (but not to seek to enforce any judgment \_\_\_\_\_ (Movant) \_\_\_\_\_ may obtain against the debtor personally or the debtor's post-petition property.)

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

Commentary

The court, in its discretion, may use the movant's proposed order, this proposed form of order or enter a virtual order.

=====

**LOCAL BANKRUPTCY FORM 4001-2.1.**

**NOTICE OF MOTION REGARDING TERMINATION, ABSENCE,  
OR EXTENSION OF AUTOMATIC STAY**

[Caption as in Bankruptcy Official Form 16A]

**NOTICE OF MOTION REGARDING TERMINATION, ABSENCE,  
OR EXTENSION OF AUTOMATIC STAY**

**OBJECTION DEADLINE:** (month/day/year) .

YOU ARE HEREBY NOTIFIED that a Motion regarding                     (insert specific type of motion, i.e. termination, absence, extension or imposition of stay or determination that property is of consequential value)                     has been filed, a copy of which is attached hereto.

A hearing on the motion has been set for           (month/day/year)           at           (time)           at the U.S. Bankruptcy Court, U.S. Custom House, 721 19th Street, Courtroom (        ), Fifth Floor, Denver, Colorado 80202.

IF YOU DESIRE TO OPPOSE THIS MOTION, you must file with this court a WRITTEN OBJECTION to the motion on or before the objection deadline listed above, and serve a copy upon Movant's attorney, whose address is listed below.

If you file an objection, you are REQUIRED to comply with L.B.R. 4001-1(c) regarding hearing procedures, including (1) the timely submission and exchange of witness lists and exhibits and (2) attendance at the above-scheduled hearing in person.

**IF YOU FAIL TO FILE AN OBJECTION**, the scheduled hearing will be vacated and an order granting the relief requested may be granted without further notice to you.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
 Counsel to \_\_\_\_\_  
 Attorney registration number (if applicable) \_\_\_\_\_  
 Business address (or home address for *pro se*) \_\_\_\_\_  
 Telephone number \_\_\_\_\_  
 Facsimile number \_\_\_\_\_  
 E-mail address \_\_\_\_\_

## Commentary

All dates or deadlines should be printed in bold type face.



LOCAL BANKRUPTCY FORM 4001-2.2.

ORDER CONFIRMING TERMINATION OR ABSENCE OF STAY

[Caption as in Bankruptcy Official Form 16A]

ORDER CONFIRMING TERMINATION OR ABSENCE OF STAY

\_\_\_\_\_, Movant, has filed herein a request seeking an order confirming termination or absence of the automatic stay of 11 U.S.C. § 362(c).

[ ] *[insert as applicable - stay terminated after 30 days]* The record reflects that the debtor(s) previously filed a bankruptcy petition less than one year prior to the current filing but was dismissed. Pursuant to 11 U.S.C. § 362(c)(3), the court confirms that the stay as to \_\_\_\_\_ terminated effective, (month/day/year), thirty (30) days following the petition date.

[ ] *[insert as applicable - absence of stay]* The record reflects that the debtor(s) had two (2) or more bankruptcy petitions pending within the one year period prior to the current filing but were dismissed. Pursuant to 11 U.S.C. § 362(c)(4)(A)(ii), the court confirms that no stay is in effect.

[ ] *[insert as applicable - absence of stay with respect to specific property]* The record reflects that the debtor(s) failed to comply with 11 U.S.C. § 521(a)(2). Pursuant to 11 U.S.C. § 362(h), it is the order of this court that the stay does not apply to the following personal property: (description of personal property), and such property is no longer property of the estate.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
United States Bankruptcy Judge

**LOCAL BANKRUPTCY FORM 4008-1.1.****COVER SHEET FOR REAFFIRMATION AGREEMENT**

[Caption as in Bankruptcy Official Form 16A]

**COVER SHEET FOR REAFFIRMATION AGREEMENT**

This form must be completed in its entirety and filed within the time set under FED. R. BANKR. P. 4008. It may be filed by any party to the reaffirmation agreement. The filer also must attach a copy of the reaffirmation agreement to this cover sheet.

Debtor's Name: \_\_\_\_\_ Creditor's Name: \_\_\_\_\_

1. Amount of debt as of commencement of case: \$ \_\_\_\_\_
2. Amount of debt being reaffirmed: \$ \_\_\_\_\_
3. Describe collateral, if any, securing debt: \_\_\_\_\_

4. Repayment term of reaffirmation (number of months): \_\_\_\_\_
5. Monthly payment:  
Prior to reaffirmation: \$ \_\_\_\_\_ After reaffirmation: \$ \_\_\_\_\_
6. Annual percentage rate under reaffirmation:  
Prior to reaffirmation: \_\_\_\_\_ After reaffirmation: \_\_\_\_\_
7. Debtor's monthly income at time of reaffirmation: \$ \_\_\_\_\_
8. Income from Schedule I, line 16: \$ \_\_\_\_\_
9. Explain any difference in the amounts set out on lines 7 and 8: \_\_\_\_\_

10. Debtor's monthly expenses at time of reaffirmation:  
(do not include the monthly expense of this reaffirmed debt) \$ \_\_\_\_\_
11. Current expenditures from Schedule J, line 18: \$ \_\_\_\_\_
12. Explain any difference in the amounts set out on lines 10 and 11: \_\_\_\_\_

☐ Check this box if the amount on Line 10 of this form exceeds the amount on Line 7 of this Form. If these expenses exceed the income, a presumption of undue hardship arises.

☐ Check this box if the debtor was not represented by counsel during the course of negotiating this reaffirmation agreement.

13. Do the loan documents and/or sale and security agreement between the parties provide for (1) a default upon borrower filing for bankruptcy relief or becoming insolvent \_\_\_\_\_ yes \_\_\_\_\_ no; and/or  
(2) the cross-collateralization of other assets of the debtor? \_\_\_\_\_ yes \_\_\_\_\_ no.<sup>1</sup>

<sup>1</sup> If creditor does not sign this document, the information must be provided by the creditor on L.B. Form 4008-1.2.

**FILER'S CERTIFICATION**

I, \_\_\_\_\_, hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Cover Sheet for Reaffirmation Agreement.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
*Counsel to/Agent for* \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

**DEBTOR'S CERTIFICATION**

(see FED. R. BANKR. PRO. 4008(b))

I, \_\_\_\_\_ (name of debtor), certify that any explanation contained on lines 9 or 12 of this form is true and correct.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of debtor  
Printed name of debtor  
Home address  
Telephone number  
Facsimile number  
E-mail address

I, \_\_\_\_\_ (name of joint-debtor), certify that any explanation contained on lines 9 or 12 of this form is true and correct.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of joint-debtor  
Printed name of joint-debtor  
Home address  
Telephone number  
Facsimile number  
E-mail address

**ATTORNEY SIGNATURE**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
*Counsel to* \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

**Commentary**

[Source GPO 2008-2]

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LOCAL BANKRUPTCY FORM 4008-1.2.

CREDITOR DECLARATION REGARDING THE REAFFIRMATION AGREEMENT

[Caption as in Bankruptcy Official Form 16A]

CREDITOR DECLARATION REGARDING THE REAFFIRMATION AGREEMENT

Creditor declares as follows:

\_\_\_\_\_ The loan documents or sale and security agreement between the parties **DO** provide for:

- (1) a default upon borrower filing for bankruptcy relief or becoming insolvent  
\_\_\_\_\_ yes \_\_\_\_\_ no; and/or
- (2) the cross-collateralization of other assets of the debtor.  
\_\_\_\_\_ yes \_\_\_\_\_ no.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
*Counsel to/Agent for* \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

\_\_\_\_\_

**LOCAL BANKRUPTCY FORM 7041.1.****NOTICE OF MOTION TO DISMISS PROCEEDING  
TO DENY OR REVOKE DISCHARGE**

[Adversary Caption as in Bankruptcy Official Form No. 16D]

**NOTICE OF MOTION TO DISMISS PROCEEDING  
TO DENY OR REVOKE DISCHARGE**

**OBJECTION DEADLINE:** \_\_\_\_\_

YOU ARE HEREBY NOTIFIED that a motion to dismiss a proceeding to deny the debtor's discharge has been filed with this court (the "Motion").

The following consideration was promised or given, directly or indirectly, to allow for dismissal: \_\_\_\_\_.

Attached as exhibits to the Motion and this Notice are statements of claims and defenses asserted in the proceeding. Copies of the Motion with its exhibits and attachments (Docket No. \_\_\_\_), the complaint (Docket No. \_\_\_\_ ) and any answer and/or defenses (Docket No. \_\_\_\_ ) are served upon the United States Trustee and case trustee and are available for inspection in the U.S. Bankruptcy Court Clerk's Office, or upon request from the undersigned attorney.

If you desire to oppose this action you must file a written objection and request for a hearing with the court on or before the objection deadline stated above, and serve a copy thereof on the undersigned attorney. Objections and requests for hearing must clearly specify the grounds upon which they are based, including the citation of supporting legal authority, if any. General objections will not be considered by the court.

In the absence of a timely and substantiated objection and request for hearing by an interested party, the court may approve or grant the aforementioned application without any further notice to creditors or other interested parties.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

*Counsel to* \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address

**Commentary**

All dates or deadlines should be printed in bold type face.

Do not delete any provision of this form. Mark provisions that do not apply as N/A.

Any additional provisions must be printed in bold type face.

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LOCAL BANKRUPTCY FORM 8007-1.1.

TRANSCRIPT REQUEST

[Caption as in Bankruptcy Official Form 16D]

TRANSCRIPT REQUEST

A transcript has been ordered from \_\_\_\_\_ for the following date(s) \_\_\_\_\_ to be included in the Designation of the Record for appeal number \_\_\_\_\_. The expected date of arrival of the completed transcript is \_\_\_\_\_.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Counsel to \_\_\_\_\_

Attorney registration number (if applicable)

Business address (or home address for *pro se*)

Telephone number

Facsimile number

E-mail address



**LOCAL BANKRUPTCY FORM 8007-1.2.****ACKNOWLEDGMENT OF TRANSCRIPT REQUEST BY TRANSCRIBER**

[Caption as in Bankruptcy Official Form 16D]

**ACKNOWLEDGMENT OF TRANSCRIPT REQUEST BY TRANSCRIBER**

A transcript has been ordered by \_\_\_\_\_ for the following date(s) \_\_\_\_\_  
\_\_\_\_\_ to be included in the Designation of the Record for appellate case number  
\_\_\_\_\_. The expected date of arrival of the completed transcript is \_\_\_\_\_.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Transcription Co.

Business address

Telephone number

Facsimile number

E-mail address

LOCAL BANKRUPTCY FORM 9010-3.1.

LAW STUDENT APPEARANCE

[Caption as in Bankruptcy Official Form 16A]

LAW STUDENT APPEARANCE

1. Law Student Certification

I \_\_\_\_\_ certify that:

- (a) I am duly enrolled in \_\_\_\_\_ law school in accordance with L.B.R. 9010-3.
- (b) I am receiving no compensation from the client in accordance with L.B.R. 9010-3.
- (c) I am familiar with and will comply with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Federal Rules of Bankruptcy Procedure, and this court's Local Bankruptcy Rules and website (www.cob.uscourts.gov).

Dated: \_\_\_\_\_ Signature of student \_\_\_\_\_  
Printed name of student \_\_\_\_\_

2. Law School Certification

I, \_\_\_\_\_, certify that this student:

- (a) has completed at least two semesters of law school, including a course in Evidence, and is enrolled in (or has completed) an approved clinical program at the law school;
- (b) is qualified, to the best of my knowledge, to provide the legal representation permitted by L.B.R. 9010-3;
- (c) that \_\_\_\_\_, who will serve as supervising attorney, is employed in a clinical program approved by this school.

Dated: \_\_\_\_\_ Signature of Dean or authorized designee \_\_\_\_\_  
Printed name of Dean or authorized designee \_\_\_\_\_  
Position of above \_\_\_\_\_

3. Supervising Attorney's Certification

- As a member of the bar of the United States District Court for the District of Colorado, I certify that I will:
- (a) assume personal professional responsibility for the student's work in accordance with L.B.R. 9010-3;
  - (b) guide and assist this student as necessary or appropriate under the circumstances; and

(c) appear with this student in all proceedings in this matter.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number \_\_\_\_\_  
Business address \_\_\_\_\_  
Telephone number \_\_\_\_\_  
Facsimile number \_\_\_\_\_  
E-mail address \_\_\_\_\_



LOCAL BANKRUPTCY FORM 9013-1.1.

NOTICE OF (TITLE OF MOTION/APPLICATION)

[Caption as in Bankruptcy Official Form 16A]

NOTICE OF (TITLE OF MOTION/APPLICATION)

OBJECTION DEADLINE: (month/day/year)

YOU ARE HEREBY NOTIFIED that (name of movant) has filed (full title of motion/application), with the bankruptcy court and requests the following relief: (summary of motion/application)\*.

If you oppose the motion or object to the requested relief your objection and request for hearing must be filed on or before the objection deadline stated above, served on the movant at the address indicated below, and must state clearly all objections and any legal basis for the objections. The court will not consider general objections.

In the absence of a timely, substantiated objection and request for hearing by an interested party, the court may approve or grant the requested relief without any further notice to creditors or other interested parties.

Dated: By:
Movant or Counsel to Movant
Attorney registration number (if applicable)
Business address (or home address for pro se)
Telephone number
Facsimile number
E-mail address

Commentary

\* Insert a specific statement describing the requested relief or intended action to be taken, in sufficient detail to meaningfully inform the parties receiving the notice.
All dates or deadlines should be printed in bold type face.
In addition to the Motion, Notice, and proposed order, the Movant must file a copy of the Certificate of Service, L.B. Form 9013-1.2.

**LOCAL BANKRUPTCY FORM 9013-1.2.****CERTIFICATE OF SERVICE**

[Caption as in Bankruptcy Official Form 16A]

**CERTIFICATE OF SERVICE****9013-1 Certificate of Service of Motion, Notice and Proposed Order**

The undersigned certifies that on \_\_\_\_ (month/day/year) \_\_\_\_, I served by prepaid first class mail [or \_\_\_\_ (other acceptable means, i.e. via hand delivery) \_\_\_\_] a copy of the \_\_\_\_ (full name of motion or application) \_\_\_\_, notice and proposed order on all parties against whom relief is sought and those otherwise entitled to service pursuant to the FED. R. BANKR. P. and these L.B.R. at the following addresses:

**2002-1 Certificate of Service of Notice (if applicable):**

The undersigned further certifies that on \_\_\_\_ (month/day/year) \_\_\_\_, I served by prepaid first class mail [or \_\_\_\_ (other acceptable means, i.e. via hand delivery) \_\_\_\_] a copy of the foregoing Notice in accordance with FED. R. BANKR. P. 2002 and 11 U.S.C. § 342(c) (if applicable) on parties in interest contained on the attached list, which is a copy of the court's Creditor Address Mailing Matrix for this case, obtained from PACER on \_\_\_\_ (month/day/year) \_\_\_\_, and, if applicable, other interested parties the movant mailed notice at the following addresses:

Dated: \_\_\_\_\_ By: \_\_\_\_\_

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**LOCAL BANKRUPTCY FORM 9013-1.4.****CERTIFICATE OF CONTESTED MATTER AND REQUEST FOR HEARING**

[Caption as in Bankruptcy Official Form 16A]

**CERTIFICATE OF CONTESTED MATTER AND REQUEST FOR HEARING**

On           (month/day/year)          ,           (name of party)          , [Movant or Respondent], filed a motion or application pursuant to L.B.R. 9013-1 or 2002-1 entitled           (title of motion or application)           (Docket no.         ). Movant/Respondent hereby represents and shows the court:

1. [MOVANT ONLY] Movant certifies that service of the motion/application, notice and proposed order were timely made on all parties against whom relief is sought and those otherwise entitled to service pursuant to the FED. R. BANKR. P. and these L.B.R. as is shown on the certificate of service, L.B. Form 9013-1.2, previously filed with the motion/application on           (month/day/year)          .

2. [MOVANT ONLY, IF APPLICABLE] Movant certifies that mailing or other service of the notice was timely made on all other creditors and parties in interest pursuant to L.B.R. 9013-1 and 2002-1 (or in the manner permitted by an order of the court, a copy of which is attached), as is shown on the certificate of service, L.B. Form 9013-1.2, previously filed with the notice on           (month/day/year)          .

3. [MOVANT/RESPONDENT] Objections and requests for hearing on the motion/application have been filed by the following party/parties:

a.                                 , (Docket No.         )

b.                                 , (Docket No.         )

4. [MOVANT/RESPONDENT] The docket numbers for each of the following relevant documents are:

a. the motion and all documents attached thereto and served therewith, (Docket No.         );

b. the notice, (Docket No.         );

c. the certificate of service of the motion and the notice, (Docket No.         );

d. the proposed order, (Docket No.         ); and

e. other:                                 , (Docket No.         ).

5. [MOVANT/RESPONDENT] Movant/Respondent certifies that a good faith effort has been made to resolve this matter           (indicate manner of conference, either telephonic or in person)          , without the necessity of a hearing.

6. [IF APPLICABLE] Resolution of this contested matter may benefit from a preliminary hearing to resolve the following disputed legal issues:           (insert summary of disputed legal issues)          .

7. [IF APPLICABLE] Resolution of this contested matter will require an evidentiary hearing. Movant/Respondent estimates the hearing will proceed as follows: [INSERT AS APPLICABLE]

- (a) a summary of the factual issues to be tried;
- (b) estimate of time required for hearing;
- (c) the number of witnesses anticipated;
- (d) whether expert witness testimony will be required; and
- (e) whether any discovery will be necessary and, if so, the nature of, and time required for, the discovery needed.

WHEREFORE, (Movant/Respondent) prays that the court set this matter for hearing pursuant to L.B.R. 9013-1.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

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LOCAL BANKRUPTCY FORM 9070-1.1.

LIST OF WITNESSES AND EXHIBITS

[Caption as in Bankruptcy Official Form 16A]

LIST OF WITNESSES AND EXHIBITS

\_\_\_\_\_ (Movant/Respondent/Plaintiff/Defendant) (the “Party”), through undersigned counsel, hereby designates the following witnesses and exhibits for the hearing rial on \_\_\_\_\_ (month/day/year) , at \_\_\_\_\_ (time) in Courtroom \_\_\_\_\_.

WITNESSES

Party **will call** the following witnesses:

- 1. \_\_\_\_\_ , to testify regarding: \_\_\_\_\_.
- 2. \_\_\_\_\_ , as an adverse witness.

Party **may call** the following witnesses:

- 1. \_\_\_\_\_ , to testify regarding \_\_\_\_\_.
- 2. \_\_\_\_\_ , to testify regarding \_\_\_\_\_.

EXHIBITS

Party intends to introduce as exhibits at trial those exhibits enumerated in Attachment 1, attached hereto and incorporated herein.

Dated: \_\_\_\_\_ By: \_\_\_\_\_  
Counsel to \_\_\_\_\_  
Attorney registration number (if applicable)  
Business address (or home address for *pro se*)  
Telephone number  
Facsimile number  
E-mail address

---

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[Caption as in Bankruptcy Official Form 16A]

## ATTACHMENT 1

## EXHIBITS FOR HEARING

Submitted by: \_\_\_\_\_ (name of party) \_\_\_\_\_.

In connection with: (date and nature of hearing or trial).

[illegible]

**UNITED STATES  
BANKRUPTCY COURT  
DISTRICT OF COLORADO**

**LOCAL  
BANKRUPTCY  
APPENDIX**

---

UNITED STATES  
DEPARTMENT OF COMMERCE  
BUREAU OF ECONOMIC RESEARCH

ANNUAL  
REPORT  
1921



# APPENDIX

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# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

## LOCAL BANKRUPTCY APPENDIX

### LOCAL BANKRUPTCY RULE 1007-1APP. LISTS, SCHEDULES, STATEMENTS & OTHER DOCUMENTS

(a) **Schedules, Statements and Other Documents Required:** The following original documents should be submitted in the following sequence to constitute a filing of a complete Voluntary Petition Packet for Relief under Chapters 7, 11, 12 and 13 (a link to the forms can be located and obtained from [www.cob.uscourts.gov](http://www.cob.uscourts.gov)):

- (1) Cover Sheet - L.B. Form 1002-1.1 (for paper filed cases only)
- (2) Voluntary Petition - Official Form 1
- (3) Statement of Financial Affairs - Official Form 7
- (4) Summary of Schedules A-J and Statistical Summary of Certain Liabilities - Official Form 6-Summary
- (5) Schedules A, B, C, D, E, F, G and H - Official Forms 6A through 6H
- (6) For individual filers, Schedules I and J - Official Forms 6I and 6J
- (7) Declaration Concerning Debtor's Schedules - Official Form 6
- (8) Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer - Official Form 19 (submitted only if debtor used the services of a bankruptcy petition preparer)
- (9) For each individual debtor, copies of all payment advices, paycheck stubs, or other evidence of all salary, commissions or income received within 60 days before the bankruptcy case was filed, copied on 8 1/2 by 11 paper with the debtor's full name printed on top of each page (and bankruptcy case number, if a number has been assigned); or, if applicable, complete L.B. Form 1007-6.1 ("Statement Under Penalty of Perjury Concerning Payment Advices") for each debtor.
- (10) Disclosure of Compensation of Attorney for Debtor, if applicable - Director's Procedural Form B 203
- (11) Creditors Matrix (see L.B.R. 1007-2 and L.B.R. 1007-2App for instructions).
- (12) Verification of Creditors Matrix - L.B. Form 1007-2.1.

**(b) Additional Items due from Individual Debtors:**

**Any Chapter:**

- (1) Certificate of Credit Counseling or Motion/Certification for Exemption or Exception, L.B. Form 1007-1.1.
- (2) Statement of Social Security number - Official Form 21
- (3) A record of any interest in an education IRA or qualified state tuition program (see 26 U.S.C. § 529)
- (4) Statement of Military Service - Director's Procedural Form 202

**Chapter 7 Individual Debtors:**

- (1) Statement of Current Monthly Income and Means Test Calculation - Official Form 22A
- (2) Statement of Intention - Official Form 8

**Chapter 11 Individual Debtors:**

- (1) Statement of Current Monthly Income - Official Form 22B

**Chapter 13 Individual Debtors:**

- (1) Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Chapter 13) - Official Form 22C



- (2) Chapter 13 Plan - L.B. Form 3015-1.1
- (c) **Additional Items due from Chapter 11 Debtors:**
- (1) List of Twenty Largest Creditors - Official Form 4
  - (2) Corporate Ownership Statement as required by FED. R. BANKR. P. 1007(a)(1) - L.B. Form 1007-4.1.
  - (3) List of Equity Interest Holders as required by FED. R. BANKR. P. 1007(a)(3) - L.B. Form 1007-4.2.
  - (4) Small Business Debtors - the following items pursuant to 11 U.S.C. § 1116(1)(A) or a statement under penalty of perjury that no such document exists pursuant to 11 U.S.C. § 1116(1)(B):
    - (i) balance sheet
    - (ii) statement of operations
    - (iii) cash-flow statement
    - (iv) Federal income tax return

**LOCAL BANKRUPTCY RULE 1007-2APP.**  
**INSTRUCTIONS REGARDING CREDITOR ADDRESS MAILING MATRIX**

(a) **Instructions:** In order to ensure that the debtor's verified list of creditors, referred to as the Creditor Address Mailing Matrix, is properly formatted and loaded into the electronic case management system, the debtor must comply with the following instructions and guidelines:

(1) The completed original/amended Creditor Address Mailing Matrix must be saved as a **TEXT** (.txt) file type and submitted to the court on a Compact Disk (CD), a Digital Video Disk (DVD) or a 3-1/2 inch 1.44 MB diskette in lieu of a printed paper copy (Do NOT use 720K Dual Density diskettes or MAC formatted diskettes). **TEXT** files, when saved properly will have a ".txt" extension after the file name. For example, if a Creditor Address Mailing Matrix file is saved with the name of 'creditor', the full file name will be '**creditor.txt**'. **A HARD COPY (PAPER) OF THE COMPLETED MATRIX IS NOT REQUIRED.**

(2) All PCs having a WINDOWS Operating System have a package called **NOTEPAD** under Programs, Accessories, **NOTEPAD**. **NOTEPAD** is a basic word processor and will easily save a **TEXT** file as its basic file type. Also, word processing packages and petition preparation packages may have different descriptions for **TEXT** file types. For example, newer versions of MS WORD will use **TEXT ONLY** (.txt) as a file type. Similarly, newer versions of WordPerfect will have **ASCII DOS TEXT** as a file type. All of the above referenced word processing programs are acceptable, but you may find **NOTEPAD** the easiest to use when saving a **TEXT** file.

(3) The name and address of each creditor, including a box or street number, city, state and zip code must be listed. If an assignment of the account or debt is known, the full names and addresses of both the original creditor and assignee must be listed. If the debt is in the hands of an attorney or other agent for collection, the full names and addresses of both the creditor and attorney or other agent should be listed, if known. **Do NOT list full account numbers, only the last four digits of the account number. Do NOT list the amount owed to the creditor on the Creditor Address Mailing Matrix.**

(4) Creditor Address Mailing Matrix on diskette should be prepared as follows:

- (A) Do NOT include page titles, headers, or page numbers
- (B) One single column per page
- (C) Five (5) lines per address maximum
- (D) Special characters such as @#\$\$%^&\*()\_+? are not permitted
- (E) City, state and zip code must be on one (1) line
- (F) City, state and zip code must be on the last line of the address
- (G) Triple space between each creditor's address
- (H) Maximum of forty (40) characters per line

(5) Do **NOT** include the names and addresses for the following people as they will be retrieved automatically by the system for noticing:

- (A) Debtor and/or joint debtor
- (B) Attorney for the debtor
- (C) Any Chapter Trustee (Ch. 7, 12, 13)
- (D) The United States Trustee

(6) The **Verification of Creditor Address Mailing Matrix**, L.B. Form 1007-2.1, must be prepared and filed along with the CD/DVD or diskette.

(7) A supplemental or amended Creditor Address Mailing Matrix must include **ONLY new creditors NOT PREVIOUSLY SUBMITTED. DO NOT include creditors submitted on a previous CD/DVD or diskette.** See L.B.R. 1009-1 for additional information on amending the Creditor Address Mailing Matrix and Schedules.

(8) If you wish to change the address of a creditor already submitted, file a completed Change of Address form and DO NOT file an amended Creditor Address Mailing Matrix.

(b) **Sample:** The Creditor Address Mailing Matrix should look like the format below the line. Please remember that headings, titles, and page numbers are not necessary.

*(Note: the samples below are not actual addresses)*

### SAMPLE CREDITOR ADDRESS MAILING MATRIX

Sears Credit  
Re: XX XXX 4587  
123 Main St.  
Denver, CO 80202

Wells Fargo Bank  
Re: XX XXX 9852  
8000 W. Major Blvd.  
Chicago, IL 12345

BankOne  
Re: XX XXX 5412  
MasterCard Dept.  
4567 Highway 85  
Fargo, ND 11333

(c) The "Creditor Address Mailing Matrix" with an updated list of all creditors, parties in interest and parties who have filed entries of appearance, etc., can be obtained from CM/ECF under the Utilities menu by selecting Mailing Labels by Case under the mailings category.

### Commentary

[Source: Amended GPO 2001-7]

LOCAL BANKRUPTCY RULE 1017-3APP.  
UNITED STATES TRUSTEE’S STANDING MOTION  
TO DISMISS DEFICIENT CASE

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

IN RE:

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)  
)  
)  
)  
)  
)

Case No.

Debtor.

UNITED STATES TRUSTEE’S STANDING MOTION TO DISMISS DEFICIENT  
CASE

The United States Trustee (“UST”) hereby moves the Court to dismiss any case where there is a deficient filing as defined in L.B.R. 1017-3 upon the following grounds:

1. The failure to timely file lists, schedules, statements and other required documents to commence a case as required by the Court, Bankruptcy Code and Rules unreasonably delays the efficient administration of cases and is prejudicial to the trustee, creditors and other parties in interest.
2. A deficient case as defined in L.B.R. 1017-3(a)(1), is cause for dismissal pursuant to 11 U.S.C. §§ 707(a)(1) & (3), 1112(b)(4)(F) and (e), 1208(c)(1) and 1307(c)(1) & (9).
3. The deficiencies in the filings in this case constitute cause for dismissal pursuant to L.B.R.1017-3.

Wherefore, the UST respectfully requests that the Court dismiss, after notice as provided for in L.B.R. 1017-3, any case in which there is a deficient case filing as defined in L.B.R. 1017-3, and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

CHARLES F. McVAY  
UNITED STATES TRUSTEE  
/s/Gregory M. Garvin  
By: Gregory M. Garvin, #38460  
Assistant United States Trustee  
999 18th Street, Suite 1551  
Denver, CO 80202  
(303) 312-7242  
(303) 312-7259 fax  
gregory.garvin@usdoj.gov



**LOCAL BANKRUPTCY RULE 2016-2APP.  
GUIDELINES FOR MONTHLY INTERIM COMPENSATION PROCEDURES IN  
CHAPTER 11 CASES**

(a) Guidelines: The party seeking interim compensation procedures pursuant to L.B.R. 2016-2 must comply with the order authorizing such compensation and the procedures established therein concerning monthly statements, interim fee applications, and the final fee application. These guidelines are subject to change on a case-by-case basis.

(1) The court may authorize the debtor to pay professionals less than all requested interim fees and expenses subject to interim and final approval pursuant to 11 U.S.C. § 331.

(2) The interim fee application and proposed order must contain at least a 25% “hold-back” on fees. All of the fees requested may be allowed on an interim basis, however payment will only be allowed in a maximum amount of 75% of the allowed fees and 100% of the allowed costs.

(3) To the extent any fees or expenses are not finally approved by the court, they must be offset against the 25% hold-back or be disgorged from the professional as appropriate.

(4) Once a month, and within fourteen (14) days from the end of the month for which compensation is sought, professionals must submit a detailed monthly statement including a billing statement to the debtor or party responsible for payment in a form generally acceptable for fee applications.

(5) Professionals must also submit each monthly statement to debtor’s counsel, the United States Trustee, any appointed chapter 11 trustee, and to counsel for any unsecured creditors’ committee (or if there is no counsel of record, to all members of the committee), and as requested by parties-in-interest, collectively the “noticed parties.”

(6) The noticed parties will have fourteen (14) days to raise any objections to the requested fees in the monthly statement, specifically stating the nature of the objection and the amount of the objectionable fees.

(7) If the parties are unable to resolve any disputes they may file a motion seeking resolution by the court.

(8) Once the fourteen (14) day notice period has passed and/or all objections have been resolved, the debtor may pay its professionals the monthly compensation without further order of the court if the debtor has sufficient cash reserves to pay its administrative creditors. All monthly fees paid without a court order are subject to the interim and final fee applications filed with the court, and therefore subject to disgorgement.

(9) Parties subject to a monthly interim compensation procedure order must:

(A) comply with 11 U.S.C. § 330, L.B.R. 2016-1 and L.B. Form 2016-1.1 for interim and final compensation approval,

(B) file formal interim fee applications at least once every 120 days and not more than every 180 days, and

(C) seek final approval of all interim compensation fee applications by filing a final fee application.

(10) Failure to object to a monthly statement does not constitute waiver of the right to object to a formal interim or final fee application.

**Commentary**

Review the procedures for each Chambers at [www.uscourts.gov](http://www.uscourts.gov) to see if additional information on interim compensation is available

**LOCAL BANKRUPTCY RULE 4001-1APP.**  
**GUIDELINES FOR MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY**

**1. Preliminary Recitals:**

- Date Petition was filed;
- The nature of relief sought: terminate stay, annul stay, modify stay, condition stay or describe any other relief sought; and
- State whether the relief sought is from the co-debtor's stay.

**2. MOVANT:**

- Identify the name of the Movant and whether the Movant is a secured creditor, lessor or describe what other interest the Movant claims in the matter for which relief is sought.
- Attach to the motion for relief or include in the preliminary hearing exhibits the endorsements or other supporting documentation to evidence moving party's standing.

**3. COLLATERAL:**

- Provide type and address of real property;
- Provide year, make and model of vehicle;
- Describe any other personal property; and
- State the fair market value of collateral, the source for that value and the date of any appraisal on the collateral.

**4. DEBT:**

- Provide the amount of the contract balance as of the filing of the motion;
- Provide the amount of the monthly payment and specify whether the amount includes principal, interest, taxes, insurance and identify any other charges.

**5. DEFAULT:**

- State the number of months and amount of the pre-petition default, if any;
- State the number of months and amount of the post-petition default, if any;
- State the amount of any other default or amounts owed;
- Payment history: If a default is alleged as to payment on the debt, attach a detailed payment history regarding the debt and arrearages to the motion and include it, or any updated version, in the preliminary hearing exhibits;
- State the date of any notice of default;
- State the date of any Notice of Trustee's Sale;
- State the amount of any advances to senior lienholders; and
- State whether the debtor has requested a loan modification and the status of any requested loan modification.

**6. OTHER ALLEGATIONS:**

- Recitals concerning lack of adequate protection, 11 U.S.C. § 362(d)(1):
  - State whether there is insurance;
  - State the amount of any unpaid taxes;
  - State whether and why the asset is rapidly depreciating asset; and
  - State any other allegations in support of a lack of adequate protection.
- Recitals concerning no equity and not necessary for an effective reorganization, 11 U.S.C. § 362(d)(2):
  - If equity is an issue provide information regarding the status of other liens and encumbrances, if known (e.g. trust deeds, tax liens, etc.) and include the approximate outstanding balance of the other liens and encumbrances.
- Recitals concerning other "cause," 11 U.S.C. § 362(d)(1):
  - Describe any pertinent information in support of bad faith; and
  - Provide any other pertinent information or reasons for filing motion (i.e. to pursue state court litigation).
- Recitals concerning in rem relief, 11 U.S.C. § 362(d)(4):
  - Describe any pertinent information in support of property transfers or multiple filings that would support the relief.

**Commentary**

The guidelines in L.B. Rule 4001-1APP are intended to provide relevant information, as applicable, in the motion filed pursuant to Fed.R.Bankr. P. 4001 and L.B.R. 4001-1.



**LOCAL BANKRUPTCY RULE 4001-3APP.  
CASH COLLATERAL AND POST-PETITION FINANCING**

**(a) Provisions that will not normally be approved without a demonstration of need or cause:**

(1) Cross-collateralization clauses (clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement), except as a means of providing adequate protection for use of cash collateral, to the extent of deterioration of a secured creditor's position. See 11 U.S.C. § 552.

(2) Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection or amount of the secured party's lien or debt.

(3) Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not party to the stipulation (This would include, for example, an order approving a stipulation providing that the secured party's lien is a "first priority" lien.).

(4) Waivers of 11 U.S.C. § 506(c).

(5) Provisions that operate, as a practical matter, to divest the debtor-in-possession of any discretion in the formulation of a plan, administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.

(6) Releases of liability for the creditor's alleged prepetition torts or breaches of contract.

(7) Waivers of avoidance actions arising under the Bankruptcy Code.

(8) Automatic relief from the automatic stay upon default, conversion to Chapter 7, or appointment of a trustee.

(9) Waivers of the procedural requirements for foreclosure mandated under applicable non-bankruptcy law.

(10) Adequate protection provisions that create liens on claims for relief arising under the Bankruptcy Code (see 11 U.S.C. §§ 506(c), 544, 545, 547, 548, and 549).

(11) Waivers, effective on default or expiration, of the debtor's right to move for a court order pursuant to 11 U.S.C. § 363(c)(2)(B) authorizing the use of cash collateral in the absence of the secured party's consent.

(12) Findings of fact on matters extraneous to the approval process.

**(b) Provisions that generally may be approved:**

(1) Withdrawal of consent to use cash collateral or termination of further financing, upon occurrence of a default or conversion to Chapter 7.

(2) Securing any postpetition diminution in the value of the secured party's collateral with a lien on postpetition collateral.

(3) Securing new advances or secured position value diminution with a lien on other assets of the estate.

(4) Reasonable reporting requirements.

(5) Reasonable budgets and use restrictions.

(6) Expiration date for the stipulation.

(7) Subject to showing need or cause, the provisions listed above in (a)(3) and (a)(5-7) may be approved if the provisions bind only the debtor-in-possession, but not its successors.

**LOCAL BANKRUPTCY RULE 5005-4APP.  
ECF ADMINISTRATIVE PROCEDURES**

Several Local Bankruptcy Rules deal specifically with the requirements and implications of electronic filing. Please see L.B.R. 5005-4 on Electronic Filing; L.B.R. 9004-1 Papers-Requirements of Form; L.B.R. 9011-4 Signatures and 9036-1 Notice by Electronic Transmission. Your knowledge of the provisions of those rules is vital for the successful use of ECF and compliance with the ECF Administrative Procedures.

These ECF Administrative Procedures highlight many of the provisions, implications and pertinent information related to electronic filing.

**(a) Eligibility and Registration for the Electronic Filing System**

(1) Eligibility. Attorneys admitted to practice in the District of Colorado, and others as the court deems appropriate, who file, on average, one or more documents per week must register as Electronic Filers in the court's ECF system. Attorneys who file, on average, less than one document per week may register as Electronic Filers in the court's ECF system.

**(2) Registration.**

(A) Each Electronic Filer registering for CM/ECF must enroll themselves and/or their designated staff person in and complete a CM/ECF Electronic Filer Training Program conducted by the Clerk. The Clerk will use his discretion in a fair and nondiscriminatory manner to ensure that all registrants are treated fairly. Attorneys to whom these ECF Procedures mandatorily apply will be given preference in training class scheduling and may enroll two persons for any scheduled class. Attorneys to whom these ECF Procedures are discretionary, may enroll only one person for any scheduled class, and classes may be rescheduled to accommodate those attorneys to whom mandatory ECF Procedures apply.

(B) In lieu of attending a training class conducted by the Clerk, each Electronic Filer must obtain and complete a self-directed training program available from the Clerk. Self-enrollment for the Training Program will be via online at [https://ecf.cob.uscourts.gov/ecf\\_training.htm](https://ecf.cob.uscourts.gov/ecf_training.htm).

(C) Registration requires the Electronic Filer applicant's name, address, telephone number, Internet e-mail address, and a declaration that the Electronic Filer, if an attorney, is admitted to practice in the District of Colorado. Upon completion of the online registration, the Clerk will transmit a registration confirmation form back to the Electronic Filer applicant. All registration form must be submitted to the Clerk, U. S. Bankruptcy Court, District of Colorado, 721 19th Street, Denver, Colorado, 80202-2508, Attention: ECF System Registration, or COBML\_Training@cob.uscourts.gov.

(3) Password. Each Electronic Filer is entitled to one CM/ECF password for electronic retrieval, filing and noticing of documents in accordance with CM/ECF. Registration for a password is governed by paragraph I.C.

(A) The password required to submit documents to the ECF system serves as the Electronic Filer's original signature on all electronic documents filed with the court.

(B) Electronic Filers agree to protect the security of their passwords and immediately notify the Clerk if they learn that their password has been compromised. Electronic Filers may also find it desirable to change their assigned passwords periodically and may do so by contacting the Systems Department of the Clerk's Office.

(C) The individual named in the CM/ECF registration Form remains the official recipient of the Electronic Filer's password. No Electronic Filer or other person may knowingly permit or cause to permit an Electronic Filer's password to be used by anyone other than an authorized agent of the Electronic Filer. All documents submitted via an Electronic Filer's password is considered "signed" by the Electronic Filer to whom the password is issued.

(D) Pursuant to 5005-4, the court reserves the right to temporarily deactivate an Electronic Filer's password, or to revoke it and the authority to file electronically.



**(b) Electronic Filing and Service of Documents****(1) Filing.**

(A) Electronic filing: except as expressly provided herein or as directed by a Judge in a particular case or matter, all petitions, statements of affairs, schedules, motions, pleadings, memoranda of law, certificates of contested and non-contested matters, or other documents required to be filed with the court in connection with a case must be electronically filed in accordance with these ECF Procedures

(B) Signatures: all documents requiring original signatures or verification may bear facsimile, imaged or "electronic signatures," e.g., "s/Jane Doe." Documents requiring the signatures of more than one party may be electronically filed, provided that the document contains all necessary signatures.

(C) Waiver of paper format: pursuant to Fed.R.Bankr.P. 5005(a)(2), a document filed by electronic means in accordance with these ECF Administrative Procedures, constitutes a written paper for the purpose of applying the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure made applicable by the Federal Rules of Bankruptcy Procedure, and § 107 of Title 11, United States Code, except as otherwise provided by these procedures. Electronic filers who file documents electronically pursuant to these procedures are excused from filing said documents in paper form.

(D) Copies: except as otherwise stated in these ECF Administrative Procedures, all petitions, schedules, statements, lists, and amendments thereto, and all motions, applications, notices, objections, requests for hearing and other documents filed or converted to electronic case files pursuant to these procedures are to be filed in electronic format only. The requirement to file copies in paper format does not apply, except when specifically requested by a Judge or Judge's chambers.

(E) Exhibits: because lengthy and voluminous exhibits create accessibility problems in CM/ECF, Electronic Filers filing documents that reference exhibits not prepared in electronically produced text must scan and electronically file those exhibits divided as separate attachments in PDF format each of which must not exceed one hundred (100) pages in length, scanned at three hundred (300) or less d.p.i.

(F) Proofs of claim: proofs of claim may be electronically filed by attorneys or other parties who are authorized to file electronically pursuant to these ECF Procedures. The Clerk will scan all proofs of claim and exhibits attached thereto filed in paper format into CM/ECF. Exhibits in excess of approximately one hundred (100) pages in length, scanned at three hundred (300) or less d.p.i., will be divided and scanned as multiple attachments to the claim

(G) Title of docket entries: electronic filers are responsible for selecting the appropriate event and title for the electronically filed document using one of the options provided in the system, e.g., motion, application, etc.

(H) Fees payable to the Clerk: When a document requiring a fee is electronically filed, the electronic filer must effect payment of the fee via credit card at the conclusion of the transaction. Failure to pay the fee, if any, at the conclusion of the day on which the transaction occurs, may result in an order striking filing of the document. Repeated failure to pay the filing fee for electronically filed documents may result in the temporary suspension or revocation of the electronic filer's ECF password. In the event the credit card charge cannot be processed, the Electronic Filer will be contacted and must satisfy the required payment within 24 hours. This paragraph does not apply to federal agencies and chapter 7 trustees for whom different filing fee payment arrangements may apply.

(I) Exclusions to electronic filing of documents and the requirements and provisions of these ECF Administrative Procedures for documents that will continue to be filed in conventional paper format:

- (i) Involuntary petitions filed pursuant to 11 U.S.C. 303;
- (ii) Petitions filed pursuant to chapter 9;



- (iii) Petitions ancillary to foreign proceedings filed pursuant to 11 U.S.C. § 1501 et seq.;
  - (iv) Miscellaneous cases wherein the court does not already have jurisdiction such as a motion to quash a subpoena issued by a court or judicial officer in another jurisdiction;
  - (v) Notices of Removal; and
  - (vi) Writs.
- (2) Consequences of Electronic Filing.
- (A) The official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.
- (B) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight MST or MDT, as applicable, in order to be considered timely filed that day. Notwithstanding the foregoing, an Electronic Filer whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.
- (C) It is the responsibility of the Electronic Filer to file and link electronic documents correctly in accordance with the requirements of CM/ECF and these ECF Procedures. In the event an Electronic Filer files an electronic document containing errors, omissions, defects or other deficiencies, the Clerk will, upon discovery, make an entry on the docket noting the error or omission and send the Electronic Filer notice of entry of the error or omission via the Automatic Notice of Electronic Filing pursuant to paragraph II.C.2. of these Procedures. The electronic filer must correct the error or omission described in said Automatic Notice of Electronic Filing by the close of the next court day following transmittal of the Automatic Notice of Electronic Filing. The failure to timely correct the error or omission, unless the court orders otherwise, will result in the erroneous document not being acted upon by the court. Certain other matters may be corrected by the Clerk's staff pursuant to local rule or General Procedure Order.
- (3) Service.
- (A) General Rule: except as otherwise provided in paragraph II.C.3., all documents required to be served must be served in paper (i.e., "hard copy") form in the manner mandated by the applicable law and rules.
- (B) Automatic Notice of Electronic Filing: the CM/ECF system automatically generates a Notice of Electronic Filing at the time a document is filed with the system. The Notice indicates the time of filing, the name of the party and Electronic Filer filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice by e-mail to retrieve the document automatically. The CM/ECF system automatically sends this Notice to all Electronic Filers participating in the case. Electronic Filers are obligated to ensure that their e-mail boxes designated to receive the Notice have sufficient capacity to receive all notifications.
- (C) Consent to electronic service from the court: the request for and receipt of an electronic filing password from the court constitutes a request for electronic service pursuant to FED. R. BANKR. P. 9036 of all notices, orders, decrees and judgments issued by the court, and except as otherwise provided in the ECF Administrative Procedures, a waiver of the right to receive notice and service from the court by mail. Electronic filers will receive electronic notification of notices, orders, decrees and judgments in cases where they enter their appearance.
- (D) Service from Other Parties: registration does not constitute waiver of the right to personal service or service by first class mail from other parties in the case. Registration does not constitute consent to electronic service from other parties in the case.

(E) Case specific consent to electronic service notice from other parties: An electronic filer may file a specific waiver of the right to personal service or first class mail and consent to electronic service notice from other parties in each case pursuant to FED. R. BANK. P. 9036. Whenever service is required to be made on a person who has filed a case specific waiver/consent, service and notice must be accomplished by electronic mail to the e-mail address on file with the court. Any notice sent via e-mail from a party other than the court must contain "Notice of Pleadings" in the subject or "re" line. The certificate of service must contain the email addresses and name(s) of the person(s) to whom electronic service was affected.

(F) Orders: All signed orders, decrees, judgments, and proceedings of the court will be electronically filed by the court or court personnel in accordance with these ECF Procedures, which will constitute entry on the docket kept by the Clerk under FED. R. BANKR. PRO. 5003 and 9021. Immediately upon the electronic entry of an order or judgment, a Notice of Electronic Filing will be transmitted to all Electronic Filers who have entered appearances in the case. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by FED. R. BANKR. PRO. 9022. The Clerk will provide notice in paper form to any person who is entitled to receive notice, but is not a registered Electronic Filer. In addition to the Notice of Electronic Filing, the Clerk, may, at his/her discretion, also provide notice in paper form to Electronic

(c) **Access to the Docket**

(1) Internet Access. Any person or organization may obtain access to the "read only" area of CM/ECF at the court's Internet site at [www.cob.uscourts.gov](http://www.cob.uscourts.gov) by obtaining a PACER password and paying any fees established for such access. Those who have PACER access, but who are not Electronic Filers, may retrieve docket sheets and documents, but they may not file documents. Information posted on the CM/ECF system must not be downloaded for uses inconsistent with the privacy concerns of any person.

(2) Access at the Court. Electronic access to all documents filed for public access is available, without obtaining a password, in the Clerk's office during regular business hours, Monday through Friday. Conventional and certified copies of electronically filed documents may be purchased at the Clerk's office during regular business hours Monday through Friday. The fee for copying and certifying will be in accordance with the Schedule of Miscellaneous Fees promulgated by the Judicial Conference of the United States pursuant to 28 USC § 1930(b).

(3) Access Charges. Electronic access fees are payable in accordance with the fees and procedures established by the Judicial Conference of the United States pursuant to 28 USC § 1930(b).

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO  
ELECTRONIC CASE FILING (ECF) SYSTEM  
ELECTRONIC FILER REGISTRATION FORM  
(Live System)**

To register for an account on the Court's ECF System, please provide the information requested below:

Name: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Firm Address: \_\_\_\_\_

Voice Phone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

Bar ID# and State: \_\_\_\_\_

Date admitted to practice before the Colorado U.S. District Court, or, alternatively, date and case number where pro hac vice practice was authorized before the Colorado U.S. Bankruptcy Court: \_\_\_\_\_

Primary E-Mail Address (for e-mail notification) \_\_\_\_\_

Send Duplicate E-Mail To: \_\_\_\_\_

Send Electronic Notice (check one): \_\_\_\_\_ Each Filing \_\_\_\_\_ End of Day Summary \_\_\_\_\_

Send Electronic Notice in the following format (check one):

\_\_\_\_\_ HTML for Netscape, ISP mail service, i.e, AOL, Hotmail, Yahoo, etc.

\_\_\_\_\_ Text for cc:mail, Groupwise, Outlook, Outlook Express, Other (please list)

CM/ECF Contact Name and Telephone Number \_\_\_\_\_

***By submitting this registration form, applicant agrees to the statements  
on the next page.***



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO  
ELECTRONIC CASE FILING (ECF) SYSTEM  
ELECTRONIC FILER REGISTRATION FORM  
(Live System)**

By submitting this registration form, applicant agrees to the following:

1. Federal Rule of Bankruptcy Procedure 9011 requires that every pleading, motion, and other paper (except lists, schedules, statements or amendments thereto) filed with the Court be signed by at least one attorney of record or, if the party is not represented by an attorney, by the party. The unique password issued to an Electronic Filer identifies that person to the Court each time he or she logs on to the ECF system. The use of an Electronic Filer's password constitutes the signature of the Electronic Filer for the purposes of Fed.R.Bankr.P. 9011 on any document or pleading filed electronically using that Electronic Filer's password. Therefore, an Electronic Filer must protect and secure the password issued by the Court. If you have any reason to suspect your password has been compromised, it is your duty to notify the Court immediately. The Court will thereafter immediately delete that password from the ECF system and issue a new password.

2. By this registration, applicant agrees to adhere to General Procedure Order No. 2001-8 and the Administrative Procedures for Electronic Case Files attached thereto and referenced therein, including consenting to the electronic service of pleadings and other papers from the Court as set forth in paragraphs II.C.3. therein. Applicant further understands and agrees that upon entering an appearance as an Electronic Filer in a case or proceeding, such appearance does not constitute consent to receive notice and service by electronic means from other attorneys unless he or she files a specific consent for service by electronic means within such case or proceeding. Applicant further understands that upon notification of an error, omission, or other deficiency in a document filed electronically, the Electronic Filer shall correct said deficiency no later than the next court day, failing which said deficient document shall be deemed stricken.

3. Applicant agrees that prior to receiving a login and password to electronically file documents, he or she must enroll in and satisfactorily complete a CM/ECF Electronic Filer Training Program conducted by the clerk.

4. Applicant understands that originals of all electronically filed pleadings, affidavits, and other documents that contain original signatures or require verification under Fed.R.Bankr.P. 1008, or an unsworn declaration as provided in 28 U.S.C. § 1746, must be maintained by the attorney of record or the party originating the document for two years following expiration of all time periods for appeals after entry of a final order terminating the case or proceeding.

5. Except for federal agencies and chapter 7 trustees for whom other filing fee payment procedures may apply, applicant understands that in order to electronically file documents for which a fee is required, he or she must pay those fees with a credit card via the secured Internet either upon conclusion of the transaction or by the close of business on the date of the filing. The applicant further understands that failure to meet this payment requirement represents a defective filing and may result in the loss of electronic filing privileges.

6. Applicant understands that the Court may revoke an Electronic Filer's password and, therefore, his or her authority and ability to electronically file documents for failure to comply with any provisions of this agreement, failure to adequately protect his or her Electronic Filer password, failure to comply with the provisions of General Procedure Order No. 2001-8 or the Administrative Procedures for Electronic Case Files attached thereto, failure to pay any fees required for documents electronically filed, or other misuse of the electronic case filing system.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant

Please return to:     Bradford L. Bolton, Clerk  
                              U. S. Bankruptcy Court  
                              District of Colorado  
                              721 19th St.  
                              Denver, CO 80202

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF COLORADO  
ELECTRONIC CASE FILING (ECF) SYSTEM**

**ELECTRONIC FILER PASSWORD FORM  
(Live System)**

Electronic Filer Password (provided by filer): \_\_\_\_\_

(Eight character limit)

Signature of Electronic Filer: \_\_\_\_\_

Date: \_\_\_\_\_

NOTE: Upon the electronic filer's completion of a court administered CM/ECF training course and assigned homework, a CM/ECF login will be assigned on this form and mailed to the electronic filer.



**RULES OF  
CIVIL PROCEDURE  
FOR  
UNITED STATES DISTRICT  
COURTS**

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Adopted December 20, 1937,  
effective September 16, 1938  
Amended since their adoption.

1914

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# **RULES OF CIVIL PROCEDURE FOR UNITED STATES DISTRICT COURTS**

## **TITLE I. SCOPE OF RULES — FORM OF ACTION**

### **Rule 1. Scope and Purpose.**

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

(Amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted February 28, 1966, effective July 1, 1966, and by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007.)

#### **COMMENT**

The language of Rule 1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The merger of law, equity, and admiralty practice is complete. There is no need to carry forward the phrases that initially accomplished the merger.

The former reference to “suits of a civil nature” is changed to the more modern “actions and proceedings.” This change does not affect such questions as whether the Civil Rules apply to summary proceedings created by statute. See *SEC v. McCarthy*, 322 F.3d 650 (9th Cir. 2003); see also *New Hampshire Fire Ins. Co. v. Scanlon*, 362 U.S. 404 (1960).

### **Rule 2. One Form of Action.**

There is one form of action — the civil action.

(Amended, effective December 1, 2007.)

#### **COMMENT**

The language of Rule 2 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

## **TITLE II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS**

### **Rule 3. Commencing an Action.**

A civil action is commenced by filing a complaint with the court.

(Amended, effective December 1, 2007.)

#### **COMMENT**

The caption of Rule 3 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 4. Summons.****(a) Contents; Amendments.****(1) Contents.** A summons must:

- (A) name the court and the parties;
- (B) be directed to the defendant;
- (C) state the name and address of the plaintiff's attorney or — if unrepresented — of the plaintiff;
- (D) state the time within which the defendant must appear and defend;
- (E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;
- (F) be signed by the clerk; and
- (G) bear the court's seal.

**(2) Amendments.** The court may permit a summons to be amended.

**(b) Issuance.** On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons — or a copy of a summons that is addressed to multiple defendants — must be issued for each defendant to be served.

**(c) Service.**

**(1) In General.** A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

**(2) By Whom.** Any person who is at least 18 years old and not a party may serve a summons and complaint.

**(3) By a Marshal or Someone Specially Appointed.** At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

**(d) Waiving Service.**

**(1) Requesting a Waiver.** An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of a waiver form, and a prepaid means for returning the form;

(D) inform the defendant, using text prescribed in Form 5, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent — or at least 60 days if sent to the defendant outside any judicial district of the United States — to return the waiver; and

(G) be sent by first-class mail or other reliable means.

**(2) Failure to Waive.** If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) *Time to Answer After a Waiver.* A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent — or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) *Results of Filing a Waiver.* When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) *Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) *Serving an Individual Within a Judicial District of the United States.* Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) *Serving an Individual in a Foreign Country.* Unless federal law provides otherwise, an individual — other than a minor, an incompetent person, or a person whose waiver has been filed — may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) *Serving a Minor or an Incompetent Person.* A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) *Serving a Corporation, Partnership, or Association.* Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or



(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and — if the agent is one authorized by statute and the statute so requires — by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) *Serving the United States and Its Agencies, Corporations, Officers, or Employees.*

(1) *United States.* To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought — or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk — or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time.* The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) *Serving a Foreign, State, or Local Government.*

(1) *Foreign State.* A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.

(2) *State or Local Government.* A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(k) *Territorial Limits of Effective Service.*

(1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(l) *Proving Service.*

(1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) *Service Outside the United States.* Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) *Validity of Service; Amending Proof.* Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) *Time Limit for Service.* If a defendant is not served within 120 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

(n) *Asserting Jurisdiction over Property or Assets.*

(1) *Federal Law.* The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) *State Law.* On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

(Amended by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 29, 1980, effective August 1, 1980, by P.L. 97-462, approved January 12, 1983, effective February 28, 1983, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 17, 2000, effective December 1, 2000; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 4 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 4(d)(1)(C) corrects an inadvertent error in former Rule 4(d)(2)(G). The defendant needs two copies of the waiver form, not an extra copy of the notice and request.

Rule 4(g) changes “infant” to “minor.” “Infant” in the present rule means “minor.” Modern word usage suggests that “minor” will better maintain the intended meaning. The same change from “infant” to “minor” is made throughout the rules. In addition, subdivision (f)(3) is added to the description of methods of service that the court may order; the addition ensures the evident intent that the court not order service by means prohibited by international agreement.

Rule 4(i)(4) corrects a misleading reference to “the plaintiff” in former Rule 4(i)(3). A party other than a plaintiff may need a reasonable time to effect service. Rule 4(i)(4) properly covers any party.



Former Rule 4(j)(2) refers to service upon an “other governmental organization subject to suit.” This is changed to “any other state-created governmental organization that is subject to suit.” The change entrenches the meaning indicated by the caption (“Serving a Foreign, State, or Local Government”), and the invocation of state law. It excludes any risk that this rule might be read to govern service on a federal agency, or other entities not created by state law.

### **Rule 4.1. Serving Other Process.**

(a) *In General.* Process — other than a summons under Rule 4 or a subpoena under Rule 45 — must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. It may be served anywhere within the territorial limits of the state where the district court is located and, if authorized by a federal statute, beyond those limits. Proof of service must be made under Rule 4(l).

(b) *Enforcing Orders: Committing for Civil Contempt.* An order committing a person for civil contempt of a decree or injunction issued to enforce federal law may be served and enforced in any district. Any other order in a civil-contempt proceeding may be served only in the state where the issuing court is located or elsewhere in the United States within 100 miles from where the order was issued.

(Added by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 4.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 5. Serving and Filing Pleadings and Other Papers**

(a) *Service: When Required.*

(1) *In General.* Unless these rules provide otherwise, each of the following papers must be served on every party:

- (A) an order stating that service is required;
- (B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;
- (C) a discovery paper required to be served on a party, unless the court orders otherwise;
- (D) a written motion, except one that may be heard *ex parte*; and
- (E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) *Seizing Property.* If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) *Service: How Made.*

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General.* A paper is served under this rule by:

- (A) handing it to the person;
- (B) leaving it:
  - (i) at the person’s office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or



(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address — in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it by electronic means if the person consented in writing — in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing — in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) *Using Court Facilities.* If a local rule so authorizes, a party may use the court's transmission facilities to make service under Rule 5(b)(2)(E).

(c) *Serving Numerous Defendants.*

(1) *In General.* If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties.* A copy of every such order must be served on the parties as the court directs.

(d) *Filing.*

(1) *Required Filings; Certificate of Service.* Any paper after the complaint that is required to be served — together with a certificate of service — must be filed within a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(2) *How Filing Is Made — In General.* A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) *Electronic Filing, Signing, or Verification.* A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is a written paper for purposes of these rules.

(4) *Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

(Amended by order adopted January 21, 1963, effective July 1, 1963, by order adopted March 30, 1970, effective July 1, 1970, by order adopted April 29, 1980, effective August 1, 1980, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 23, 1996, effective December 1, 1996, by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 23, 2001, effective December 1, 2001, and by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 5 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 5(a)(1)(E) omits the former reference to a designation of record on appeal. Appellate Rule 10 is a self-contained provision for the record on appeal, and provides for service.

Former Rule 5(b)(2)(D) literally provided that a local rule may authorize use of the court's transmission facilities to make service by non-electronic means agreed to by the parties. That was not intended. Rule 5(b)(3) restores the intended meaning—court transmission facilities can be used only for service by electronic means.

Rule 5(d)(2)(B) provides that “a” judge may accept a paper for filing, replacing the reference in former Rule 5(e) to “the” judge. Some courts do not assign a designated judge to each case, and it may be important to have another judge accept a paper for filing even when a case is on the individual docket of a particular judge. The ministerial acts of accepting the paper, noting the time, and transmitting the paper to the court clerk do not interfere with the assigned judge's authority over the action.

### **Rule 5.1. Constitutional Challenge to a Statute — Notice, Certification, and Intervention.**

(a) *Notice by a Party.* A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity; or

(B) a state statute is questioned and the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity; and

(2) serve the notice and paper on the Attorney General of the United States if a federal statute is questioned — or on the state attorney general if a state statute is questioned — either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) *Certification by the Court.* The court must, under 28 U.S.C. § 2403, certify to the appropriate attorney general that a statute has been questioned.

(c) *Intervention; Final Decision on the Merits.* Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(d) *No Forfeiture.* A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

(Added by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 5.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 5.2. Privacy Protection for Filings Made with the Court.**

(a) *Redacted Filings.* Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;



(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) *Exemptions from the Redaction Requirement.* The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by Rule 5.2(c) or (d); and

(6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.

(c) *Limitations on Remote Access to Electronic files; Social-Security Appeals and Immigration Cases.* Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

(1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;

(2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:

(A) the docket maintained by the court; and

(B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.

(d) *Filings Made Under Seal.* The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) *Protective Orders.* For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) *Option for Additional Unredacted Filing Under Seal.* A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) *Option for Filing a Reference List.* A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) *Waiver of Protection of Identifiers.* A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

(Added by order adopted December 1, 2007.)

## COMMENT

The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, Public Law 107-347. Section 205(c)(3) requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically." The rule goes further than the E-Government Act in regulating paper filings even when they are not converted to electronic form. But the number of filings that remain in paper form is certain to diminish over time. Most districts scan paper filings into the electronic case file, where they become available to the public in the same way as documents initially filed in electronic form. It is electronic availability, not the form of the initial filing, that raises the privacy and security concerns addressed in the E-Government Act.



The rule is derived from and implements the policy adopted by the Judicial Conference in September 2001 to address the privacy concerns resulting from public access to electronic case files. See <http://www.privacy.uscourts.gov/Policy.htm>. The Judicial Conference policy is that documents in case files generally should be made available electronically to the same extent they are available at the courthouse, provided that certain “personal data identifiers” are not included in the public file.

While providing for the public filing of some information, such as the last four digits of an account number, the rule does not intend to establish a presumption that this information never could or should be protected. For example, it may well be necessary in individual cases to prevent remote access by nonparties to any part of an account number or social security number. It may also be necessary to protect information not covered by the redaction requirement—such as driver’s license numbers and alien registration numbers—in a particular case. In such cases, protection may be sought under subdivision (d) or (e). Moreover, the Rule does not affect the protection available under other rules, such as Civil Rules 16 and 26(c), or under other sources of protective authority.

Parties must remember that any personal information not otherwise protected by sealing or redaction will be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the court.

The clerk is not required to review documents filed with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party or nonparty making the filing.

Subdivision (c) provides for limited public access in Social Security cases and immigration cases. Those actions are entitled to special treatment due to the prevalence of sensitive information and the volume of filings. Remote electronic access by nonparties is limited to the docket and the written dispositions of the court unless the court orders otherwise. The rule contemplates, however, that nonparties can obtain full access to the case file at the courthouse, including access through the court’s public computer terminal.

Subdivision (d) reflects the interplay between redaction and filing under seal. It does not limit or expand the judicially developed rules that govern sealing. But it does reflect the possibility that redaction may provide an alternative to sealing.

Subdivision (e) provides that the court can by order in a particular case for good cause require more extensive redaction than otherwise required by the Rule. Nothing in this subdivision is intended to affect the limitations on sealing that are otherwise applicable to the court.

Subdivision (f) allows a person who makes a redacted filing to file an unredacted document under seal. This provision is derived from section 205(c)(3)(iv) of the E-Government Act.

Subdivision (g) allows the option to file a register of redacted information. This provision is derived from section 205(c)(3)(v) of the E-Government Act, as amended in 2004. In accordance with the E-Government Act, subdivision (g) refers to “redacted” information. The term “redacted” is intended to govern a filing that is prepared with abbreviated identifiers in the first instance, as well as a filing in which a personal identifier is edited after its preparation.

Subdivision (h) allows a person to waive the protections of the rule as to that person’s own personal information by filing it unsealed and in unredacted form. One may wish to waive the protection if it is determined that the costs of redaction outweigh the benefits to privacy. If a person files an unredacted identifier by mistake, that person may seek relief from the court.

Trial exhibits are subject to the redaction requirements of Rule 5.2 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.

## **Rule 6. Computing and Extending Time; Time for Motion Papers.**

(a) *Computing Time.* The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

(b) *Extending Time.*

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) *Motions, Notices of Hearing, and Affidavits.*

(1) *In General.* A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions:

(A) when the motion may be heard *ex parte*;

(B) when these rules set a different time; or

(C) when a court order — which a party may, for good cause, apply for *ex parte* — sets a different time.

(2) *Supporting Affidavit.* Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.



(d) *Additional Time After Certain Kinds of Service.* When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted December 4, 1967, effective July 1, 1968, by order adopted March 1, 1971, effective July 1, 1971, by order adopted April 28, 1983, effective August 1, 1983, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 26, 1999, effective December 1, 1999, by order adopted April 23, 2001, effective December 1, 2001; by order April 25, 2005, effective December 1, 2005; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 6 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

**Subdivision (a).** — Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time. In accordance with Rule 83(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 2 U.S.C. § 394 (specifying method for computing time periods prescribed by certain statutory provisions relating to contested elections to the House of Representatives).

**Subdivision (a)(1).** — New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. *See, e.g.*, Rule 60(c)(1). Subdivision (a)(1)(B)’s directive to “count every day” is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and the 10-day period not infrequently ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int’l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivi-



sion (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rule 14(a)(1).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method — two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were generally retained without change.

**Subdivision (a)(2).** — New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Civil Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** — When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday, or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply "[u]nless the court orders otherwise." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to "weather or other conditions" as the reason for the inaccessibility of the clerk's office. The reference to "weather" was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

**Subdivision (a)(4).** — New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may, for example, address the problems that might arise if a single district has clerk's offices in different time zones, or provide that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that “[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.” A corresponding provision exists in Rule 77(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casaldue v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

**Subdivision (a)(5).** — New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Civil Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.,* Rule 59(b) (motion for new trial “must be filed no later than 28 days after entry of the judgment”). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.,* Rule 26(f) (parties must hold Rule 26(f) conference “as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 30 days *after* an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days *before* an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday — no later than Tuesday, September 4.

**Subdivision (a)(6).** — New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Civil Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are declared a holiday by the President or Congress.

For forward-counted periods — *i.e.,* periods that are measured after an event — subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot's Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk's office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday — no earlier than Tuesday, April 22.



The times set in the former rule at 1 or 5 days have been revised to 7 or 14 days. See the Note above to Rule 6. [12/1/09]

### TITLE III. PLEADINGS AND MOTIONS

#### Rule 7. Pleadings Allowed; Form of Motions and Other Papers.

(a) *Pleadings*. Only these pleadings are allowed:

- (1) a complaint;
- (2) an answer to a complaint;
- (3) an answer to a counterclaim designated as a counterclaim;
- (4) an answer to a crossclaim;
- (5) a third-party complaint;
- (6) an answer to a third-party complaint; and
- (7) if the court orders one, a reply to an answer.

(b) *Motions and Other Papers*.

(1) *In General*. A request for a court order must be made by motion. The motion must:

- (A) be in writing unless made during a hearing or trial;
- (B) state with particularity the grounds for seeking the order; and
- (C) state the relief sought.

(2) *Form*. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, and by order adopted April 28, 1983, effective August 1, 1983; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 7 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 7(a) stated that “there shall be \* \* \* an answer to a cross-claim, if the answer contains a cross-claim \* \* \*.” Former Rule 12(a)(2) provided more generally that “[a] party served with a pleading stating a cross-claim against that party shall serve an answer thereto \* \* \*.” New Rule 7(a) corrects this inconsistency by providing for an answer to a crossclaim.

For the first time, Rule 7(a)(7) expressly authorizes the court to order a reply to a counterclaim answer. A reply may be as useful in this setting as a reply to an answer, a third-party answer, or a crossclaim answer.

Former Rule 7(b)(1) stated that the writing requirement is fulfilled if the motion is stated in a written notice of hearing. This statement was deleted as redundant because a single written document can satisfy the writing requirements both for a motion and for a Rule 6(c)(1) notice.

The cross-reference to Rule 11 in former Rule 7(b)(3) is deleted as redundant. Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion.

Former Rule 7(c) is deleted because it has done its work. If a motion or pleading is described as a demurrer, plea, or exception for insufficiency, the court will treat the paper as if properly captioned.

#### Rule 7.1. Disclosure Statement.

(a) *Who Must File; Contents*. A nongovernmental corporate party must file 2 copies of a disclosure statement that:



- (1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
- (2) states that there is no such corporation.
- (b) *Time to File; Supplemental Filing.* A party must:
  - (1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
  - (2) promptly file a supplemental statement if any required information changes.

(Amended by order adopted April 29, 2002, effective December 1, 2002; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 7.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 8. General Rules of Pleading.

- (a) *Claim for Relief.* A pleading that states a claim for relief must contain:
  - (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
  - (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
  - (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.
- (b) *Defenses; Admissions and Denials.*
  - (1) *In General.* In responding to a pleading, a party must:
    - (A) state in short and plain terms its defenses to each claim asserted against it; and
    - (B) admit or deny the allegations asserted against it by an opposing party.
  - (2) *Denials — Responding to the Substance.* A denial must fairly respond to the substance of the allegation.
  - (3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
  - (4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.
  - (5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.
  - (6) *Effect of Failing to Deny.* An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.
- (c) *Affirmative Defenses.*
  - (1) *In General.* In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:
    - accord and satisfaction;
    - arbitration and award;
    - assumption of risk;
    - contributory negligence;
    - duress;
    - estoppel;
    - failure of consideration;
    - fraud;

- illegality;
- injury by fellow servant;
- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) *Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.*

(1) *In General.* Each allegation must be simple, concise, and direct. No technical form is required.

(2) *Alternative Statements of a Claim or Defense.* A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) *Inconsistent Claims or Defenses.* A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) *Construing Pleadings.* Pleadings must be construed so as to do justice.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007; amended, effective December 1, 2010.)

## COMMENT

The language of Rule 8 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The former Rule 8(b) and 8(e) cross-references to Rule 11 are deleted as redundant. Rule 11 applies by its own terms. The force and application of Rule 11 are not diminished by the deletion.

Former Rule 8(b) required a pleader denying part of an averment to “specify so much of it as is true and material and \* \* \* deny only the remainder.” “[A]nd material” is deleted to avoid the implication that it is proper to deny something that the pleader believes to be true but not material.

Deletion of former Rule 8(e)(2)’s “whether based on legal, equitable, or maritime grounds” reflects the parallel deletions in Rule 1 and elsewhere. Merger is now successfully accomplished. [12/1/07]

**Subdivision (c)(1).** “[D]ischarge in bankruptcy” is deleted from the list of affirmative defenses. Under 11 U.S.C. § 524(a)(1) and (2) a discharge voids a judgment to the extent that it determines a personal liability of the debtor with respect to a discharged debt. The discharge also operates as an injunction against commencement or continuation of an action to collect, recover, or offset a discharged debt. For these reasons it is confusing to describe discharge as an affirmative defense. But § 524(a) applies only to a claim that was actually discharged. Several categories of debt set out in 11 U.S.C. § 523(a) are excepted from discharge. The issue whether a claim was excepted from discharge may be determined either in the court that entered the discharge or — in most instances — in another court with jurisdiction over the creditor’s claim. [12/1/10]

## Rule 9. Pleading Special Matters.

(a) *Capacity or Authority to Sue; Legal Existence.*

(1) *In General.* Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) *Raising Those Issues.* To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) *Fraud or Mistake; Conditions of Mind.* In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) *Conditions Precedent.* In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) *Official Document or Act.* In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.

(e) *Judgment.* In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) *Time and Place.* An allegation of time or place is material when testing the sufficiency of a pleading.

(g) *Special Damages.* If an item of special damage is claimed, it must be specifically stated.

(h) *Admiralty or Maritime Claim.*

(1) *How Designated.* If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(2) *Designation for Appeal.* A case that includes an admiralty or maritime claim within this subdivision (h) is an admiralty case within 28 U.S.C. § 1292(a)(3).

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted December 4, 1967, effective July 1, 1968, by order adopted March 30, 1970, effective July 1, 1970, and by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 11, 1997, effective December 1, 1997, and by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 9 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

## Rule 10. Form of Pleadings.

(a) *Caption; Names of Parties.* Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) *Paragraphs; Separate Statements.* A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would



promote clarity, each claim founded on a separate transaction or occurrence — and each defense other than a denial — must be stated in a separate count or defense.

(c) *Adoption by Reference; Exhibits.* A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(Amended, effective December 1, 2007.)

### COMMENT

The language of Rule 10 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions.**

(a) *Signature.* Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name — or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) *Representations to the Court.* By presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) *Sanctions.*

(1) *In General.* If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for Sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Court's Initiative.* On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) *Nature of a Sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order

directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) *Limitations on Monetary Sanctions.* The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) *Requirements for an Order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) *Inapplicability to Discovery.* This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(Amended by order adopted April 28, 1983, effective August 1, 1983, by order adopted March 2, 1987, effective August 1, 1987, and by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 11 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing.**

(a) *Time to Serve a Responsive Pleading.*

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) *United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.



(b) *How to Present Defenses.* Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) improper venue;
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) *Motion for Judgment on the Pleadings.* After the pleadings are closed — but early enough not to delay trial — a party may move for judgment on the pleadings.

(d) *Result of Presenting Matters Outside the Pleadings.* If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) *Motion for a More Definite Statement.* A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) *Motion to Strike.* The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or

- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) *Joining Motions.*

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) *Waiving and Preserving Certain Defenses.*

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)-(5) by:

- (A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or
- (B) failing to either:

- (i) make it by motion under this rule; or

- (ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

- (A) in any pleading allowed or ordered under Rule 7(a);
- (B) by a motion under Rule 12(c); or
- (C) at trial.

(3) *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.



(i) *Hearing Before Trial.* If a party so moves, any defense listed in Rule 12(b)(1)-(7) — whether made in a pleading or by motion — and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 17, 2000, effective December 1, 2000; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 12 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 12(a)(4) referred to an order that postpones disposition of a motion “until the trial on the merits.” Rule 12(a)(4) now refers to postponing disposition “until trial.” The new expression avoids the ambiguity that inheres in “trial on the merits,” which may become confusing when there is a separate trial of a single issue or another event different from a single all-encompassing trial. [12/1/07]

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6. [12/1/09]

### Rule 13. Counterclaim and Crossclaim.

#### (a) *Compulsory Counterclaim.*

(1) *In General.* A pleading must state as a counterclaim any claim that — at the time of its service — the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) *Exceptions.* The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) *Permissive Counterclaim.* A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) *Relief Sought in a Counterclaim.* A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) *Counterclaim Against the United States.* These rules do not expand the right to assert a counterclaim — or to claim a credit — against the United States or a United States officer or agency.

(e) *Counterclaim Maturing or Acquired After Pleading.* The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) *[Abrogated].*

(g) *Crossclaim Against a Coparty.* A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

(h) *Joining Additional Parties.* Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(i) *Separate Trials; Separate Judgments.* If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing party's claims have been dismissed or otherwise resolved.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, and by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 13 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The meaning of former Rule 13(b) is better expressed by deleting “not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.” Both as a matter of intended meaning and current practice, a party may state as a permissive counterclaim a claim that does grow out of the same transaction or occurrence as an opposing party's claim even though one of the exceptions in Rule 13(a) means the claim is not a compulsory counterclaim. [12/1/07]

Rule 13(f) is deleted as largely redundant and potentially misleading. An amendment to add a counterclaim will be governed by Rule 15. Rule 15(a)(1) permits some amendments to be made as a matter of course or with the opposing party's written consent. When the court's leave is required, the reasons described in Rule 13(f) for permitting amendment of a pleading to add an omitted counterclaim sound different from the general amendment standard in Rule 15(a)(2), but seem to be administered - as they should be - according to the same standard directing that leave should be freely given when justice so requires. The independent existence of Rule 13(f) has, however, created some uncertainty as to the availability of relation back of the amendment under Rule 15(c). *See 6 C. Wright, A. Miller & M. Kane, Federal Practice & Procedure: Civil 2d, § 1430 (1990).* Deletion of Rule 13(f) ensures that relation back is governed by the tests that apply to all other pleading amendments. [12/1/09]

### Rule 14. Third-Party Practice.

(a) *When a Defending Party May Bring in a Third Party.*

(1) *Timing of the Summons and Complaint.* A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

(2) *Third-Party Defendant's Claims and Defenses.* The person served with the summons and third-party complaint — the “third-party defendant”:

(A) must assert any defense against the third-party plaintiff's claim under Rule 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(g);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.



(3) *Plaintiff's Claims Against a Third-Party Defendant.* The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The third-party defendant must then assert any defense under Rule 12 and any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(g).

(4) *Motion to Strike, Sever, or Try Separately.* Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) *Third-Party Defendant's Claim Against a Nonparty.* A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(6) *Third-Party Complaint In Rem.* If it is within the admiralty or maritime jurisdiction, a third-party complaint may be in rem. In that event, a reference in this rule to the "summons" includes the warrant of arrest, and a reference to the defendant or third-party plaintiff includes, when appropriate, a person who asserts a right under Supplemental Rule C(6)(a)(i) in the property arrested.

(b) *When a Plaintiff May Bring in a Third-Party.* When a claim is asserted against a plaintiff, the plaintiff may bring in a third-party if this rule would allow a defendant to do so.

(c) *Admiralty or Maritime Claim.*

(1) *Scope of Impleader.* If a plaintiff asserts an admiralty or maritime claim under Rule 9(h), the defendant or a person who asserts a right under Supplemental Rule C(6)(a)(i) may, as a third-party plaintiff, bring in a third-party defendant who may be wholly or partly liable — either to the plaintiff or to the third-party plaintiff — for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.

(2) *Defending Against a Demand for Judgment for the Plaintiff.* The third-party plaintiff may demand judgment in the plaintiff's favor against the third-party defendant. In that event, the third-party defendant must defend under Rule 12 against the plaintiff's claim as well as the third-party plaintiff's claim; and the action proceeds as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, and by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The language of Rule 14 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 14 twice refers to counterclaims under Rule 13. In each case, the operation of Rule 13(a) depends on the state of the action at the time the pleading is filed. If plaintiff and third-party defendant have become opposing parties because one has made a claim for relief against the other, Rule 13(a) requires assertion of any counterclaim that grows out of the transaction or occurrence that is the subject matter of that claim. Rules 14(a)(2)(B) and (a)(3) reflect the distinction between compulsory and permissive counterclaims. [12/1/07]

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6. [12/1/09]

### Rule 15. Amended and Supplemental Pleadings.

(a) *Amendments Before Trial.*



(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

(b) *Amendments During and After Trial.*

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move — at any time, even after judgment — to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) *Relation Back of Amendments.*

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out — or attempted to be set out — in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the United States.* When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) *Supplemental Pleadings.* On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(Amended by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, P.L. 102-198, § 11(a), 105 Stat. 1626, December 9, 1991, by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 15 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

Former Rule 15(c)(3)(A) called for notice of the “institution” of the action. Rule 15(c)(1)(C)(i) omits the reference to “institution” as potentially confusing. What counts is that the party to be brought in have notice of the existence of the action, whether or not the notice includes details as to its “institution.” [12/1/07]

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6.

Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleading. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a “pleading” as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim. [12/1/09]

### **Rule 16. Pretrial Conferences; Scheduling; Management.**

(a) *Purposes of a Pretrial Conference.* In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:

- (1) expediting disposition of the action;
- (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial through more thorough preparation; and



(5) facilitating settlement.

(b) *Scheduling*.

(1) *Scheduling Order*. Except in categories of actions exempted by local rule, the district judge — or a magistrate judge when authorized by local rule — must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) *Time to Issue*. The judge must issue the scheduling order as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared.

(3) *Contents of the Order*.

(A) *Required Contents*. The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.

(B) *Permitted Contents*. The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure or discovery of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) set dates for pretrial conferences and for trial; and

(vi) include other appropriate matters.

(4) *Modifying a Schedule*. A schedule may be modified only for good cause and with the judge's consent.

(c) *Attendance and Matters for Consideration at a Pretrial Conference*.

(1) *Attendance*. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference. If appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) *Matters for Consideration*. At any pretrial conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(G) identifying witnesses and documents, scheduling the filing and exchange of any pretrial briefs, and setting dates for further conferences and for trial;

(H) referring matters to a magistrate judge or a master;

(I) settling the case and using special procedures to assist in resolving the dispute when authorized by statute or local rule;

(J) determining the form and content of the pretrial order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;



(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(O) establishing a reasonable limit on the time allowed to present evidence; and

(P) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) *Pretrial Orders.* After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) *Final Pretrial Conference and Orders.* The court may hold a final pretrial conference to formulate a trial plan, including a plan to facilitate the admission of evidence. The conference must be held as close to the start of trial as is reasonable, and must be attended by at least one attorney who will conduct the trial for each party and by any unrepresented party. The court may modify the order issued after a final pretrial conference only to prevent manifest injustice.

(f) *Sanctions.*

(1) *In General.* On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(vii), if a party or its attorney:

(A) fails to appear at a scheduling or other pretrial conference;

(B) is substantially unprepared to participate — or does not participate in good faith — in the conference; or

(C) fails to obey a scheduling or other pretrial order.

(2) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses — including attorney's fees — incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

(Amended by order adopted April 28, 1983, effective August 1, 1983, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 16 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

## TITLE IV. PARTIES

### Rule 17. Plaintiff and Defendant; Capacity; Public Officers.

(a) *Real Party in Interest.*

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) an executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) *Action in the Name of the United States for Another's Use or Benefit.* When a federal statute so provides, an action for another's use or benefit must be brought in the name of the United States.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) *Capacity to Sue or Be Sued.* Capacity to sue or be sued is determined as follows:

(1) for an individual who is not acting in a representative capacity, by the law of the individual's domicile;

(2) for a corporation, by the law under which it was organized; and

(3) for all other parties, by the law of the state where the court is located, except that:

(A) a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws; and

(B) 28 U.S.C. §§ 754 and 959(a) govern the capacity of a receiver appointed by a United States court to sue or be sued in a United States court.

(c) *Minor or Incompetent Person.*

(1) *With a Representative.* The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a committee;

(C) a conservator; or

(D) a like fiduciary.

(2) *Without a Representative.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem — or issue another appropriate order — to protect a minor or incompetent person who is unrepresented in an action.

(d) *Public Officer's Title and Name.* A public officer who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's name be added.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 25, 1988, effective August 1, 1988, by P.L. 100-690, § 7049, effective November 18, 1988; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 17 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 17(d) incorporates the provisions of former Rule 25(d)(2), which fit better with Rule 17.

## Rule 18. Joinder of Claims.

(a) *In General.* A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) *Joinder of Contingent Claims.* A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights. In particular, a plaintiff may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that plaintiff, without first obtaining a judgment for the money.

(Amended by order adopted February 28, 1966, effective July 1, 1966, and by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 18 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Modification of the obscure former reference to a claim “heretofore cognizable only after another claim has been prosecuted to a conclusion” avoids any uncertainty whether Rule 18(b)’s meaning is fixed by retrospective inquiry from some particular date.

### Rule 19. Required Joinder of Parties.

(a) *Persons Required to Be Joined if Feasible.*

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person’s absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:

(i) as a practical matter impair or impede the person’s ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue.* If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) *When Joinder Is Not Feasible.* If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person’s absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) *Pleading the Reasons for Nonjoinder.* When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) *Exception for Class Actions.* This rule is subject to Rule 23.

(Amended by order adopted February 28, 1966, effective July 1, 1966, and by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 19 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.



Former Rule 19(b) described the conclusion that an action should be dismissed for inability to join a Rule 19(a) party by carrying forward traditional terminology: “the absent person being thus regarded as indispensable.” “Indispensable” was used only to express a conclusion reached by applying the tests of Rule 19(b). It has been discarded as redundant.

### **Rule 20. Permissive Joinder of Parties.**

#### **(a) *Persons Who May Join or Be Joined.***

##### **(1) *Plaintiffs.*** Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

##### **(2) *Defendants.*** Persons — as well as a vessel, cargo, or other property subject to admiralty process in rem — may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

##### **(3) *Extent of Relief.*** Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

**(b) *Protective Measures.*** The court may issue orders — including an order for separate trials — to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 20 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 21. Misjoinder and Nonjoinder of Parties.**

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

(Amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 21 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 22. Interpleader.**

#### **(a) *Grounds.***

**(1) *By a Plaintiff.*** Persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead. Joinder for interpleader is proper even though:

(A) the claims of the several claimants, or the titles on which their claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the plaintiff denies liability in whole or in part to any or all of the claimants.

(2) *By a Defendant.* A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim.

(b) *Relation to Other Rules and Statutes.* This rule supplements — and does not limit — the joinder of parties allowed by Rule 20. The remedy this rule provides is in addition to — and does not supersede or limit — the remedy provided by 28 U.S.C. §§ 1335, 1397, and 2361. An action under those statutes must be conducted under these rules.

(Amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 22 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 23. Class Actions.

(a) *Prerequisites.* One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) *Types of Class Actions.* A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) *Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.*

(1) *Certification Order.*

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.

(2) *Notice.*

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes.* For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

- (i) the nature of the action;
- (ii) the definition of the class certified;
- (iii) the class claims, issues, or defenses;
- (iv) that a class member may enter an appearance through an attorney if the member so desires;
- (v) that the court will exclude from the class any member who requests exclusion;
- (vi) the time and manner for requesting exclusion; and
- (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) *Judgment.* Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) *Particular Issues.* When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) *Subclasses.* When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) *Conducting the Action.*

(1) *In General.* In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) require — to protect class members and fairly conduct the action — giving appropriate notice to some or all class members of:

- (i) any step in the action;
- (ii) the proposed extent of the judgment; or
- (iii) the members' opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) *Combining and Amending Orders.* An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) *Settlement, Voluntary Dismissal, or Compromise.* The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the



court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) The court must direct notice in a reasonable manner to all class members who would be bound by the proposal.

(2) If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.

(3) The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.

(4) If the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(5) Any class member may object to the proposal if it requires court approval under this subdivision (e); the objection may be withdrawn only with the court's approval.

(f) *Appeals.* A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit clerk within 14 days after the order is entered. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.

(g) *Class Counsel.*

(1) *Appointing Class Counsel.* Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) *Standard for Appointing Class Counsel.* When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) *Interim Counsel.* The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) *Duty of Class Counsel.* Class counsel must fairly and adequately represent the interests of the class.

(h) *Attorney's Fees and Nontaxable Costs.* In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(d)(2), subject to the provisions of this subdivision (h), at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 24, 1998, effective December 1, 1998, and by order adopted March 27, 2003, effective December 1, 2003; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 23 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Amended Rule 23(d)(2) carries forward the provisions of former Rule 23(d) that recognize two separate propositions. First, a Rule 23(d) order may be combined with a pretrial order under Rule 16. Second, the standard for amending the Rule 23(d) order continues to be the more open-ended standard for amending Rule 23(d) orders, not the more exacting standard for amending Rule 16 orders.

As part of the general restyling, intensifiers that provide emphasis but add no meaning are consistently deleted. Amended Rule 23(f) omits as redundant the explicit reference to court of appeals discretion in deciding whether to permit an interlocutory appeal. The omission does not in any way limit the unfettered discretion established by the original rule. [12/1/07]

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6. [12/1/09]

### Rule 23.1. Derivative Actions.

(a) *Prerequisites.* This rule applies when one or more shareholders or members of a corporation or an unincorporated association bring a derivative action to enforce a right that the corporation or association may properly assert but has failed to enforce. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.

(b) *Pleading Requirements.* The complaint must be verified and must:

(1) allege that the plaintiff was a shareholder or member at the time of the transaction complained of, or that the plaintiff's share or membership later devolved on it by operation of law;

(2) allege that the action is not a collusive one to confer jurisdiction that the court would otherwise lack; and

(3) state with particularity:

(A) any effort by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members; and

(B) the reasons for not obtaining the action or not making the effort.

(c) *Settlement, Dismissal, and Compromise.* A derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 23.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.



**Rule 23.2. Actions Relating to Unincorporated Associations.**

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may issue any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

(Added by order adopted February 28, 1966, effective July 1, 1966; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 23.2 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 24. Intervention.**

(a) *Intervention of Right.* On timely motion, the court must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a federal statute; or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) *Permissive Intervention.*

(1) *In General.* On timely motion, the court may permit anyone to intervene who:

- (A) is given a conditional right to intervene by a federal statute; or
- (B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency.* On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

- (A) a statute or executive order administered by the officer or agency; or
- (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) *Notice and Pleading Required.* A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 24 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.



The former rule stated that the same procedure is followed when a United States statute gives a right to intervene. This statement is deleted because it added nothing.

### **Rule 25. Substitution of Parties.**

(a) *Death.*

(1) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) *Continuation Among the Remaining Parties.* After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) *Service.* A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

(b) *Incompetency.* If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

(c) *Transfer of Interest.* If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

(d) *Public Officers; Death or Separation from Office.* An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

(Amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted April 17, 1961, effective July 19, 1961, by order adopted January 21, 1963, effective July 1, 1963, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 25 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 25(d)(2) is transferred to become Rule 17(d) because it deals with designation of a public officer, not substitution.

## **TITLE V. DISCLOSURES AND DISCOVERY**

### **Rule 26. Duty to Disclose; General Provisions Governing Discovery.**

(a) *Required Disclosures.*

(1) *Initial Disclosure.*

(A) *In General.* Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that informa-

tion — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party — who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(B) *Proceedings Exempt from Initial Disclosure.* The following proceedings are exempt from initial disclosure:

(i) an action for review on an administrative record;

(ii) a forfeiture action in rem arising from a federal statute;

(iii) a petition for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

(iv) an action brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

(v) an action to enforce or quash an administrative summons or subpoena;

(vi) an action by the United States to recover benefit payments;

(vii) an action by the United States to collect on a student loan guaranteed by the United States;

(viii) a proceeding ancillary to a proceeding in another court; and

(ix) an action to enforce an arbitration award.

(C) *Time for Initial Disclosures — In General.* A party must make the initial disclosures at or within 14 days after the parties' Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in this action and states the objection in the proposed discovery plan. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure.

(D) *Time for Initial Disclosures — For Parties Served or Joined Later.* A party that is first served or otherwise joined after the Rule 26(f) conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order.

(E) *Basis for Initial Disclosure; Unacceptable Excuses.* A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully investigated the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) *Disclosure of Expert Testimony.*

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report — prepared and signed by the witness — if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;



- (iii) any exhibits that will be used to summarize or support them;
- (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;
- (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (vi) a statement of the compensation to be paid for the study and testimony in the case.

(C) *Witnesses Who Do Not Provide a Written Report.* Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

- (i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and
- (ii) a summary of the facts and opinions to which the witness is expected to testify.

(D) *Time to Disclose Expert Testimony.* A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

- (i) at least 90 days before the date set for trial or for the case to be ready for trial; or
- (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) or (C), within 30 days after the other party's disclosure.

(E) *Supplementing the Disclosure.* The parties must supplement these disclosures when required under Rule 26(e).

(3) *Pretrial Disclosures.*

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

- (i) the name and, if not previously provided, the address and telephone number of each witness — separately identifying those the party expects to present and those it may call if the need arises;
- (ii) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and
- (iii) an identification of each document or other exhibit, including summaries of other evidence — separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) *Time for Pretrial Disclosures; Objections.* Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(A)(ii); and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 26(a)(3)(A)(iii). An objection not so made — except for one under Federal Rule of Evidence 402 or 403 — is waived unless excused by the court for good cause.

(4) *Form of Disclosures.* Unless the court orders otherwise, all disclosures under Rule 26(a) must be in writing, signed, and served.

(b) *Discovery Scope and Limits.*

(1) *Scope in General.* Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense — including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery



appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

(2) *Limitations on Frequency and Extent.*

(A) *When Permitted.* By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule 30. By order or local rule, the court may also limit the number of requests under Rule 36.

(B) *Specific Limitations on Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) *When Required.* On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

(3) *Trial Preparations: Materials.*

(A) *Documents and Tangible Things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure.* If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Previous Statement.* Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording — or a transcription of it — that recites substantially verbatim the person's oral statement.

(4) *Trial Preparation: Experts.*

(A) *Deposition of an Expert Who May Testify.* A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.

(B) *Trial-Preparation Protection for Draft Reports or Disclosures.* Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.

(C) *Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.* Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
- (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(D) *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

- (i) as provided in Rule 35(b); or
- (ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(E) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

- (i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (D); and
- (ii) for discovery under (D), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions.

(5) *Claiming Privilege or Protecting Trial-Preparation Materials.*

(A) *Information Withheld.* When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

- (i) expressly make the claim; and
- (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed — and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

(B) *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(c) *Protective Orders.*

(1) *In General.* A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;



(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) *Ordering Discovery*. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) *Awarding Expenses*. Rule 37(a)(5) applies to the award of expenses.

(d) *Timing and Sequence of Discovery*.

(1) *Timing*. A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

(2) *Sequence*. Unless, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(A) methods of discovery may be used in any sequence; and

(B) discovery by one party does not require any other party to delay its discovery.

(e) *Supplementing Disclosures and Responses*.

(1) *In General*. A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response:

(A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or

(B) as ordered by the court.

(2) *Expert Witness*. For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

(f) *Conference of the Parties; Planning for Discovery*.

(1) *Conference Timing*. Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable — and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b).

(2) *Conference Content; Parties' Responsibilities*. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26(a)(1); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person.

(3) *Discovery Plan*. A discovery plan must state the parties' views and proposals on:

(A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

(B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

(C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(D) any issues about claims of privilege or of protection as trial-preparation materials, including — if the parties agree on a procedure to assert these claims after production — whether to ask the court to include their agreement in an order;



(E) what changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

(F) any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

(4) *Expedited Schedule*. If necessary to comply with its expedited schedule for Rule 16(b) conferences, a court may by local rule:

(A) require the parties' conference to occur less than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b); and

(B) require the written report outlining the discovery plan to be filed less than 14 days after the parties' conference, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) *Signing Disclosures and Discovery Requests, Responses, and Objections*.

(1) *Signature Required; Effect of Signature*. Every disclosure under Rule 26(a)(1) or (a)(3) and every discovery request, response, or objection must be signed by at least one attorney of record in the attorney's own name — or by the party personally, if unrepresented — and must state the signer's address, e-mail address, and telephone number. By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry:

(A) with respect to a disclosure, it is complete and correct as of the time it is made; and

(B) with respect to a discovery request, response, or objection, it is:

(i) consistent with these rules and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(ii) not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(2) *Failure to Sign*. Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the court must strike it unless a signature is promptly supplied after the omission is called to the attorney's or party's attention.

(3) *Sanction for Improper Certification*. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 30, 1970, effective July 1, 1970, by order adopted April 29, 1980, effective August 1, 1980, by order adopted April 28, 1983, effective August 1, 1983, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007; amended, effective December 1, 2010.)

## COMMENT

The language of Rule 26 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 26(a)(5) served as an index of the discovery methods provided by later rules. It was deleted as redundant. Deletion does not affect the right to pursue discovery in addition to disclosure.

Former Rule 26(b)(1) began with a general statement of the scope of discovery that appeared to function as a preface to each of the five numbered paragraphs that followed. This preface has been shifted to the text of paragraph (1) because it does not accurately reflect the limits embodied in paragraphs (2), (3), or (4), and because paragraph (5) does not address the scope of discovery.

The reference to discovery of “books” in former Rule 26(b)(1) was deleted to achieve consistent expression throughout the discovery rules. Books remain a proper subject of discovery.

Amended Rule 26(b)(3) states that a party may obtain a copy of the party’s own previous statement “on request.” Former Rule 26(b)(3) expressly made the request procedure available to a nonparty witness, but did not describe the procedure to be used by a party. This apparent gap is closed by adopting the request procedure, which ensures that a party need not invoke Rule 34 to obtain a copy of the party’s own statement.

Rule 26(e) stated the duty to supplement or correct a disclosure or discovery response “to include information thereafter acquired.” This apparent limit is not reflected in practice; parties recognize the duty to supplement or correct by providing information that was not originally provided although it was available at the time of the initial disclosure or response. These words are deleted to reflect the actual meaning of the present rule.

Former Rule 26(e) used different phrases to describe the time to supplement or correct a disclosure or discovery response. Disclosures were to be supplemented “at appropriate intervals.” A prior discovery response must be “seasonably \* \* \* amend[ed].” The fine distinction between these phrases has not been observed in practice. Amended Rule 26(e)(1)(A) uses the same phrase for disclosures and discovery responses. The party must supplement or correct “in a timely manner.”

Former Rule 26(g)(1) did not call for striking an unsigned disclosure. The omission was an obvious drafting oversight. Amended Rule 26(g)(2) includes disclosures in the list of matters that the court must strike unless a signature is provided “promptly \* \* \* after being called to the attorney’s or party’s attention.”

Former Rule 26(b)(2)(A) referred to a “good faith” argument to extend existing law. Amended Rule 26(b)(1)(B)(i) changes this reference to a “nonfrivolous” argument to achieve consistency with Rule 11(b)(2). [12/1/07]

Rules 26(a)(2) and (b)(4) are amended to address concerns about expert discovery. The amendments to Rule 26(a)(2) require disclosure regarding expected expert testimony of those expert witnesses not required to provide expert reports and limit the expert report to facts or data (rather than “data or other information,” as in the current rule) considered by the witness. Rule 26(b)(4) is amended to provide work-product protection against discovery regarding draft expert disclosures or reports and — with three specific exceptions — communications between expert witnesses and counsel.

In 1993, Rule 26(b)(4)(A) was revised to authorize expert depositions and Rule 26(a)(2) was added to provide disclosure, including — for many experts — an extensive report. Many courts read the disclosure provision to authorize discovery of all communications between counsel and expert witnesses and all draft reports. The Committee has been told repeatedly that routine discovery into attorney-expert communications and draft reports has had undesirable effects. Costs have risen. Attorneys may employ two sets of experts — one for purposes of consultation and another to testify at trial — because disclosure of their collaborative interactions with expert consultants would reveal their most sensitive and confidential case analyses. At the same time, attorneys often feel compelled to adopt a guarded attitude toward their interaction with testifying experts that impedes effective communication, and experts adopt strategies that protect against discovery but also interfere with their work.

**Subdivision (a)(2)(B).** Rule 26(a)(2)(B)(ii) is amended to provide that disclosure include all “facts or data considered by the witness in forming” the opinions to be offered, rather than the “data or other information” disclosure prescribed in 1993. This amendment is intended to alter the outcome in cases that have relied on the 1993 formulation in requiring disclosure of all attorney-expert communications and draft reports. The amendments to Rule 26(b)(4) make this change explicit by providing work-product protection



against discovery regarding draft reports and disclosures or attorney-expert communications.

The refocus of disclosure on “facts or data” is meant to limit disclosure to material of a factual nature by excluding theories or mental impressions of counsel. At the same time, the intention is that “facts or data” be interpreted broadly to require disclosure of any material considered by the expert, from whatever source, that contains factual ingredients. The disclosure obligation extends to any facts or data “considered” by the expert in forming the opinions to be expressed, not only those relied upon by the expert.

**Subdivision (a)(2)(C).** Rule 26(a)(2)(C) is added to mandate summary disclosures of the opinions to be offered by expert witnesses who are not required to provide reports under Rule 26(a)(2)(B) and of the facts supporting those opinions. This disclosure is considerably less extensive than the report required by Rule 26(a)(2)(B). Courts must take care against requiring undue detail, keeping in mind that these witnesses have not been specially retained and may not be as responsive to counsel as those who have.

This amendment resolves a tension that has sometimes prompted courts to require reports under Rule 26(a)(2)(B) even from witnesses exempted from the report requirement. An (a)(2)(B) report is required only from an expert described in (a)(2)(B).

A witness who is not required to provide a report under Rule 26(a)(2)(B) may both testify as a fact witness and also provide expert testimony under Evidence Rule 702, 703, or 705. Frequent examples include physicians or other health care professionals and employees of a party who do not regularly provide expert testimony. Parties must identify such witnesses under Rule 26(a)(2)(A) and provide the disclosure required under Rule 26(a)(2)(C). The (a)(2)(C) disclosure obligation does not include facts unrelated to the expert opinions the witness will present.

**Subdivision (a)(2)(D).** This provision (formerly Rule 26(a)(2)(C)) is amended slightly to specify that the time limits for disclosure of contradictory or rebuttal evidence apply with regard to disclosures under new Rule 26(a)(2)(C), just as they do with regard to reports under Rule 26(a)(2)(B).

**Subdivision (b)(4).** Rule 26(b)(4)(B) is added to provide work-product protection under Rule 26(b)(3)(A) and (B) for drafts of expert reports or disclosures. This protection applies to all witnesses identified under Rule 26(a)(2)(A), whether they are required to provide reports under Rule 26(a)(2)(B) or are the subject of disclosure under Rule 26(a)(2)(C). It applies regardless of the form in which the draft is recorded, whether written, electronic, or otherwise. It also applies to drafts of any supplementation under Rule 26(e); see Rule 26(a)(2)(E).

Rule 26(b)(4)(C) is added to provide work-product protection for attorney-expert communications regardless of the form of the communications, whether oral, written, electronic, or otherwise. The addition of Rule 26(b)(4)(C) is designed to protect counsel’s work product and ensure that lawyers may interact with retained experts without fear of exposing those communications to searching discovery. The protection is limited to communications between an expert witness required to provide a report under Rule 26(a)(2)(B) and the attorney for the party on whose behalf the witness will be testifying, including any “preliminary” expert opinions. Protected “communications” include those between the party’s attorney and assistants of the expert witness. The rule does not itself protect communications between counsel and other expert witnesses, such as those for whom disclosure is required under Rule 26(a)(2)(C). The rule does not exclude protection under other doctrines, such as privilege or independent development of the work-product doctrine.

The most frequent method for discovering the work of expert witnesses is by deposition, but Rules 26(b)(4)(B) and (C) apply to all forms of discovery.

Rules 26(b)(4)(B) and (C) do not impede discovery about the opinions to be offered by the expert or the development, foundation, or basis of those opinions. For example, the expert’s testing of material involved in litigation, and notes of any such testing, would not be exempted from discovery by this rule. Similarly, inquiry about communications the expert had with anyone other than the party’s counsel about the opinions expressed is unaffected by the rule. Counsel are also free to question expert witnesses about alternative analyses, testing methods, or approaches to the issues on which they are testifying, whether



or not the expert considered them in forming the opinions expressed. These discovery changes therefore do not affect the gatekeeping functions called for by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and related cases.

The protection for communications between the retained expert and “the party’s attorney” should be applied in a realistic manner, and often would not be limited to communications with a single lawyer or a single law firm. For example, a party may be involved in a number of suits about a given product or service, and may retain a particular expert witness to testify on that party’s behalf in several of the cases. In such a situation, the protection applies to communications between the expert witness and the attorneys representing the party in any of those cases. Similarly, communications with in-house counsel for the party would often be regarded as protected even if the in-house attorney is not counsel of record in the action. Other situations may also justify a pragmatic application of the “party’s attorney” concept.

Although attorney-expert communications are generally protected by Rule 26(b)(4)(C), the protection does not apply to the extent the lawyer and the expert communicate about matters that fall within three exceptions. But the discovery authorized by the exceptions does not extend beyond those specific topics. Lawyer-expert communications may cover many topics and, even when the excepted topics are included among those involved in a given communication, the protection applies to all other aspects of the communication beyond the excepted topics.

First, under Rule 26(b)(4)(C)(i) attorney-expert communications regarding compensation for the expert’s study or testimony may be the subject of discovery. In some cases, this discovery may go beyond the disclosure requirement in Rule 26(a)(2)(B)(vi). It is not limited to compensation for work forming the opinions to be expressed, but extends to all compensation for the study and testimony provided in relation to the action. Any communications about additional benefits to the expert, such as further work in the event of a successful result in the present case, would be included. This exception includes compensation for work done by a person or organization associated with the expert. The objective is to permit full inquiry into such potential sources of bias.

Second, under Rule 26(b)(4)(C)(ii) discovery is permitted to identify facts or data the party’s attorney provided to the expert and that the expert considered in forming the opinions to be expressed. The exception applies only to communications “identifying” the facts or data provided by counsel; further communications about the potential relevance of the facts or data are protected.

Third, under Rule 26(b)(4)(C)(iii) discovery regarding attorney-expert communications is permitted to identify any assumptions that counsel provided to the expert and that the expert relied upon in forming the opinions to be expressed. For example, the party’s attorney may tell the expert to assume the truth of certain testimony or evidence, or the correctness of another expert’s conclusions. This exception is limited to those assumptions that the expert actually did rely on in forming the opinions to be expressed. More general attorney-expert discussions about hypotheticals, or exploring possibilities based on hypothetical facts, are outside this exception.

Under the amended rule, discovery regarding attorney-expert communications on subjects outside the three exceptions in Rule 26(b)(4)(C), or regarding draft expert reports or disclosures, is permitted only in limited circumstances and by court order. A party seeking such discovery must make the showing specified in Rule 26(b)(3)(A)(ii) — that the party has a substantial need for the discovery and cannot obtain the substantial equivalent without undue hardship. It will be rare for a party to be able to make such a showing given the broad disclosure and discovery otherwise allowed regarding the expert’s testimony. A party’s failure to provide required disclosure or discovery does not show the need and hardship required by Rule 26(b)(3)(A); remedies are provided by Rule 37.

In the rare case in which a party does make this showing, the court must protect against disclosure of the attorney’s mental impressions, conclusions, opinions, or legal theories under Rule 26(b)(3)(B). But this protection does not extend to the expert’s own development of the opinions to be presented; those are subject to probing in deposition or at trial.

Former Rules 26(b)(4)(B) and (C) have been renumbered (D) and (E), and a slight revision has been made in (E) to take account of the renumbering of former (B).

Small changes to rule language were made to conform to style conventions. In addition, the protection for draft expert disclosures or reports in proposed Rule 26(b)(4)(B) was changed to read “regardless of the form in which the draft is recorded.” Small changes were also made to the Committee Note to recognize this change to rule language and to address specific issues raised during the public comment period. [12/1/10]

### **Rule 27. Depositions to Perpetuate Testimony.**

#### **(a) Before an Action Is Filed.**

(1) *Petition.* A person who wants to perpetuate testimony about any matter cognizable in a United States court may file a verified petition in the district court for the district where any expected adverse party resides. The petition must ask for an order authorizing the petitioner to depose the named persons in order to perpetuate their testimony. The petition must be titled in the petitioner’s name and must show:

(A) that the petitioner expects to be a party to an action cognizable in a United States court but cannot presently bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner’s interest;

(C) the facts that the petitioner wants to establish by the proposed testimony and the reasons to perpetuate it;

(D) the names or a description of the persons whom the petitioner expects to be adverse parties and their addresses, so far as known; and

(E) the name, address, and expected substance of the testimony of each deponent.

(2) *Notice and Service.* At least 21 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice may be served either inside or outside the district or state in the manner provided in Rule 4. If that service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided in Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. If any expected adverse party is a minor or is incompetent, Rule 17(c) applies.

(3) *Order and Examination.* If satisfied that perpetuating the testimony may prevent a failure or delay of justice, the court must issue an order that designates or describes the persons whose depositions may be taken, specifies the subject matter of the examinations, and states whether the depositions will be taken orally or by written interrogatories. The depositions may then be taken under these rules, and the court may issue orders like those authorized by Rules 34 and 35. A reference in these rules to the court where an action is pending means, for purposes of this rule, the court where the petition for the deposition was filed.

(4) *Using the Deposition.* A deposition to perpetuate testimony may be used under Rule 32(a) in any later-filed district-court action involving the same subject matter if the deposition either was taken under these rules or, although not so taken, would be admissible in evidence in the courts of the state where it was taken.

#### **(b) Pending Appeal.**

(1) *In General.* The court where a judgment has been rendered may, if an appeal has been taken or may still be taken, permit a party to depose witnesses to perpetuate their testimony for use in the event of further proceedings in that court.

(2) *Motion.* The party who wants to perpetuate testimony may move for leave to take the depositions, on the same notice and service as if the action were pending in the district court. The motion must show:

(A) the name, address, and expected substance of the testimony of each deponent; and

(B) the reasons for perpetuating the testimony.

(3) *Court Order.* If the court finds that perpetuating the testimony may prevent a failure or delay of justice, the court may permit the depositions to be taken and may issue orders like those authorized by Rules 34 and 35. The depositions may be taken and used as any other deposition taken in a pending district-court action.



(c) *Perpetuation by an Action.* This rule does not limit a court's power to entertain an action to perpetuate testimony.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted March 1, 1971, effective July 1, 1971, by order adopted March 2, 1987, effective August 1, 1987; by order April 25, 2005, effective December 1, 2005; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 27 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6. [12/1/09]

## Rule 28. Persons Before Whom Depositions May Be Taken.

(a) *Within the United States.*

(1) *In General.* Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths either by federal law or by the law in the place of examination; or

(B) a person appointed by the court where the action is pending to administer oaths and take testimony.

(2) *Definition of "Officer."* The term "officer" in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29(a).

(b) *In a Foreign Country.*

(1) *In General.* A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths either by federal law or by the law in the place of examination; or

(D) before a person commissioned by the court to administer any necessary oath and take testimony.

(2) *Issuing a Letter of Request or a Commission.* A letter of request, a commission, or both may be issued:

(A) on appropriate terms after an application and notice of it; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) *Form of a Request, Notice, or Commission.* When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(4) *Letter of Request — Admitting Evidence.* Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States.

(c) *Disqualification.* A deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action.



(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted April 29, 1980, effective August 1, 1980, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 28 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 29. Stipulations About Discovery Procedure.

Unless the court orders otherwise, the parties may stipulate that:

(a) a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified — in which event it may be used in the same way as any other deposition; and

(b) other procedures governing or limiting discovery be modified — but a stipulation extending the time for any form of discovery must have court approval if it would interfere with the time set for completing discovery, for hearing a motion, or for trial.

(Amended by order adopted March 30, 1970, effective July 1, 1970, by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 29 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 30. Depositions by Oral Examination.

(a) *When a Deposition May Be Taken.*

(1) *Without Leave.* A party may, by oral questions, depose any person, including a party, without leave of court except as provided in Rule 30(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take the deposition before the time specified in Rule 26(d), unless the party certifies in the notice, with supporting facts, that the deponent is expected to leave the United States and be unavailable for examination in this country after that time; or

(B) if the deponent is confined in prison.

(b) *Notice of the Deposition; Other Formal Requirements.*

(1) *Notice in General.* A party who wants to depose a person by oral questions must give reasonable written notice to every other party. The notice must state the time and place of the deposition and, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) *Producing Documents.* If a subpoena duces tecum is to be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the

notice or in an attachment. The notice to a party deponent may be accompanied by a request under Rule 34 to produce documents and tangible things at the deposition.

(3) *Method of Recording.*

(A) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.

(B) *Additional Method.* With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice. That party bears the expense of the additional record or transcript unless the court orders otherwise.

(4) *By Remote Means.* The parties may stipulate — or the court may on motion order — that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

(5) *Officer's Duties.*

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

- (i) the officer's name and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent; and
- (v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded nonstenographically, the officer must repeat the items in Rule 30(b)(5)(A)(i)-(iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

(6) *Notice or Subpoena Directed to an Organization.* In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

(c) *Examination and Cross-Examination; Record of the Examination; Objections; Written Questions.*

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 and 615. After putting the deponent under oath or affirmation, the officer must record the testimony by the method designated under Rule 30(b)(3)(A). The testimony must be recorded by the officer personally or by a person acting in the presence and under the direction of the officer.

(2) *Objections.* An objection at the time of the examination — whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition — must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person



may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).

(3) *Participating Through Written Questions.* Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party noticing the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) *Duration; Sanction; Motion to Terminate or Limit.*

(1) *Duration.* Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours. The court must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(2) *Sanction.* The court may impose an appropriate sanction — including the reasonable expenses and attorney's fees incurred by any party — on a person who impedes, delays, or frustrates the fair examination of the deponent.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The motion may be filed in the court where the action is pending or the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* Rule 37(a)(5) applies to the award of expenses.

(e) *Review by the Witness; Changes.*

(1) *Review; Statement of Changes.* On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) *Changes Indicated in the Officer's Certificate.* The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) *Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.*

(1) *Certification and Delivery.* The officer must certify in writing that the witness was duly sworn and that the deposition accurately records the witness's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly send it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) *Documents and Tangible Things.*

(A) *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition. Any party may inspect and copy them. But if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originals — after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked — in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* Any party may move for an order that the originals be attached to the deposition pending final disposition of the case.



(3) *Copies of the Transcript or Recording.* Unless otherwise stipulated or ordered by the court, the officer must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method. When paid reasonable charges, the officer must furnish a copy of the transcript or recording to any party or the deponent.

(4) *Notice of Filing.* A party who files the deposition must promptly notify all other parties of the filing.

(g) *Failure to Attend a Deposition or Serve a Subpoena; Expenses.* A party who, expecting a deposition to be taken, attends in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

- (1) attend and proceed with the deposition; or
- (2) serve a subpoena on a nonparty deponent, who consequently did not attend.

(Amended by order adopted January 21, 1963, effective July 1, 1963, by order adopted March 30, 1970, effective July 1, 1970, by order adopted March 1, 1971, effective July 1, 1971, by order adopted November 20, 1972, effective July 1, 1975, by order adopted April 29, 1980, effective August 1, 1980, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 17, 2000, effective December 1, 2000; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 30 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 31. Depositions by Written Questions.

(a) *When a Deposition May Be Taken.*

(1) *Without Leave.* A party may, by written questions, depose any person, including a party, without leave of court except as provided in Rule 31(a)(2). The deponent's attendance may be compelled by subpoena under Rule 45.

(2) *With Leave.* A party must obtain leave of court, and the court must grant leave to the extent consistent with Rule 26(b)(2):

(A) if the parties have not stipulated to the deposition and:

(i) the deposition would result in more than 10 depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by the third-party defendants;

(ii) the deponent has already been deposed in the case; or

(iii) the party seeks to take a deposition before the time specified in Rule 26(d);  
or

(B) if the deponent is confined in prison.

(3) *Service; Required Notice.* A party who wants to depose a person by written questions must serve them on every other party, with a notice stating, if known, the deponent's name and address. If the name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(4) *Questions Directed to an Organization.* A public or private corporation, a partnership, an association, or a governmental agency may be deposed by written questions in accordance with Rule 30(b)(6).

(5) *Questions from Other Parties.* Any questions to the deponent from other parties must be served on all parties as follows: cross-questions, within 14 days after being served with the notice and direct questions; redirect questions, within 7 days after being served with cross-questions; and recross-questions, within 7 days after being served with redirect questions. The court may, for good cause, extend or shorten these times.

(b) *Delivery to the Officer; Officer's Duties.* The party who noticed the deposition must deliver to the officer a copy of all the questions served and of the notice. The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

- (1) take the deponent's testimony in response to the questions;
- (2) prepare and certify the deposition; and
- (3) send it to the party, attaching a copy of the questions and of the notice.

(c) *Notice of Completion or Filing.*

(1) *Completion.* The party who noticed the deposition must notify all other parties when it is completed.

(2) *Filing.* A party who files the deposition must promptly notify all other parties of the filing.

(Amended by order adopted March 30, 1970, effective July 1, 1970, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 31 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 32. Using Depositions in Court Proceedings.

(a) *Using Depositions.*

(1) *In General.* At a hearing or trial, all or part of a deposition may be used against a party on these conditions:

(A) the party was present or represented at the taking of the deposition or had reasonable notice of it;

(B) it is used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying; and

(C) the use is allowed by Rule 32(a)(2) through (8).

(2) *Impeachment and Other Uses.* Any party may use a deposition to contradict or impeach the testimony given by the deponent as a witness, or for any other purpose allowed by the Federal Rules of Evidence.

(3) *Deposition of Party, Agent, or Designee.* An adverse party may use for any purpose the deposition of a party or anyone who, when deposed, was the party's officer, director, managing agent, or designee under Rule 30(b)(6) or 31(a)(4).

(4) *Unavailable Witness.* A party may use for any purpose the deposition of a witness, whether or not a party, if the court finds:

(A) that the witness is dead;

(B) that the witness is more than 100 miles from the place of hearing or trial or is outside the United States, unless it appears that the witness's absence was procured by the party offering the deposition;

(C) that the witness cannot attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition could not procure the witness's attendance by subpoena; or

(E) on motion and notice, that exceptional circumstances make it desirable — in the interest of justice and with due regard to the importance of live testimony in open court — to permit the deposition to be used.

(5) *Limitations on Use.*

(A) *Deposition Taken on Short Notice.* A deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place — and this motion was still pending when the deposition was taken.



(B) *Unavailable Deponent; Party Could Not Obtain an Attorney.* A deposition taken without leave of court under the unavailability provision of Rule 30(a)(2)(A)(iii) must not be used against a party who shows that, when served with the notice, it could not, despite diligent efforts, obtain an attorney to represent it at the deposition.

(6) *Using Part of a Deposition.* If a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.

(7) *Substituting a Party.* Substituting a party under Rule 25 does not affect the right to use a deposition previously taken.

(8) *Deposition Taken in an Earlier Action.* A deposition lawfully taken and, if required, filed in any federal- or state-court action may be used in a later action involving the same subject matter between the same parties, or their representatives or successors in interest, to the same extent as if taken in the later action. A deposition previously taken may also be used as allowed by the Federal Rules of Evidence.

(b) *Objections to Admissibility.* Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) *Form of Presentation.* Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but may provide the court with the testimony in nontranscript form as well. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court for good cause orders otherwise.

(d) *Waiver of Objections.*

(1) *To the Notice.* An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) *To the Officer's Qualification.* An objection based on disqualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) *To the Taking of the Deposition.*

(A) *Objection to Competence, Relevance, or Materiality.* An objection to a deponent's competence — or to the competence, relevance, or materiality of testimony — is not waived by a failure to make the objection before or during the deposition, unless the ground for it might have been corrected at that time.

(B) *Objection to an Error or Irregularity.* An objection to an error or irregularity at an oral examination is waived if:

(i) it relates to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that might have been corrected at that time; and

(ii) it is not timely made during the deposition.

(C) *Objection to a Written Question.* An objection to the form of a written question under Rule 31 is waived if not served in writing on the party submitting the question within the time for serving responsive questions or, if the question is a recross-question, within 7 days after being served with it.

(4) *To Completing and Returning the Deposition.* An objection to how the officer transcribed the testimony — or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition — is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

(Amended by order adopted March 30, 1970, effective July 1, 1970, by order adopted November 20, 1972, effective July 1, 1975, by order adopted April 29, 1980, effective August 1, 1980, by order adopted March 2, 1987, effective August 1, 1987, by order



adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 32 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 32(a) applied “[a]t the trial or upon the hearing of a motion or an interlocutory proceeding.” The amended rule describes the same events as “a hearing or trial.”

The final paragraph of former Rule 32(a) allowed use in a later action of a deposition “lawfully taken and duly filed in the former action.” Because of the 2000 amendment of Rule 5(d), many depositions are not filed. Amended Rule 32(a)(8) reflects this change by excluding use of an unfiled deposition only if filing was required in the former action. [12/1/07]

The times set in the former rule at less than 11 days and within 5 days have been revised to 14 days and 7 days. See the Note to Rule 6. [12/1/09]

### Rule 33. Interrogatories to Parties.

#### (a) *In General.*

(1) *Number.* Unless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(2).

(2) *Scope.* An interrogatory may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.

#### (b) *Answers and Objections.*

(1) *Responding Party.* The interrogatories must be answered:

(A) by the party to whom they are directed; or

(B) if that party is a public or private corporation, a partnership, an association, or a governmental agency, by any officer or agent, who must furnish the information available to the party.

(2) *Time to Respond.* The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(3) *Answering Each Interrogatory.* Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.

(4) *Objections.* The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.

(5) *Signature.* The person who makes the answers must sign them, and the attorney who objects must sign any objections.

(c) *Use.* An answer to an interrogatory may be used to the extent allowed by the Federal Rules of Evidence.

(d) *Option to Produce Business Records.* If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party’s business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted March 30, 1970, effective July 1, 1970, by order adopted April 29, 1980, effective August 1, 1980, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 33 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence of former Rule 33(a) was a redundant cross-reference to the discovery moratorium provisions of Rule 26(d). Rule 26(d) is now familiar, obviating any need to carry forward the redundant cross-reference.

Former Rule 33(b)(5) was a redundant reminder of Rule 37(a) procedure that is omitted as no longer useful.

Former Rule 33(c) stated that an interrogatory “is not necessarily objectionable merely because an answer \* \* \* involves an opinion or contention \* \* \*.” “[I]s not necessarily” seemed to imply that the interrogatory might be objectionable merely for this reason. This implication has been ignored in practice. Opinion and contention interrogatories are used routinely. Amended Rule 33(a)(2) embodies the current meaning of Rule 33 by omitting “necessarily.”

#### **Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes.**

(a) *In General.* A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party’s possession, custody, or control:

(A) any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) *Procedure.*

(1) *Contents of the Request.* The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) *Responses and Objections.*

(A) *Time to Respond.* The party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.



(B) *Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

(C) *Objections.* An objection to part of a request must specify the part and permit inspection of the rest.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) *Nonparties.* As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted March 30, 1970, effective July 1, 1970, by order adopted April 29, 1980, effective August 1, 1980, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 34 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence in the first paragraph of former Rule 34(b) was a redundant cross-reference to the discovery moratorium provisions of Rule 26(d). Rule 26(d) is now familiar, obviating any need to carry forward the redundant cross-reference.

The redundant reminder of Rule 37(a) procedure in the second paragraph of former Rule 34(b) is omitted as no longer useful.

## Rule 35. Physical and Mental Examinations.

(a) *Order for an Examination.*

(1) *In General.* The court where the action is pending may order a party whose mental or physical condition — including blood group — is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(2) *Motion and Notice; Contents of the Order.* The order:

(A) may be made only on motion for good cause and on notice to all parties and the person to be examined; and

(B) must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) *Examiner's Report.*



(1) *Request by the Party or Person Examined.* The party who moved for the examination must, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(2) *Contents.* The examiner's report must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(3) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request — and is entitled to receive — from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have — in that action or any other action involving the same controversy — concerning testimony about all examinations of the same condition.

(5) *Failure to Deliver a Report.* The court on motion may order — on just terms — that a party deliver the report of an examination. If the report is not provided, the court may exclude the examiner's testimony at trial.

(6) *Scope.* This subdivision (b) applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This subdivision does not preclude obtaining an examiner's report or deposing an examiner under other rules.

(Amended by order adopted March 30, 1970, effective July 1, 1970, by order adopted March 2, 1987, effective August 1, 1987, by P.L. 100-690, § 7047, effective November 18, 1988, by order adopted April 30, 1991, effective December 1, 1991; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 35 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

#### Rule 36. Requests for Admission.

##### (a) *Scope and Procedure.*

(1) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) *Form; Copy of a Document.* Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. A shorter or longer time for responding may be stipulated to under Rule 29 or be ordered by the court.

(4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made

reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(6) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(a)(5) applies to an award of expenses.

(b) *Effect of an Admission; Withdrawing or Amending It.* A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16(e), the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted March 30, 1970, effective July 1, 1970, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 36 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence of the first paragraph of former Rule 36(a) was a redundant cross-reference to the discovery moratorium provisions of Rule 26(d). Rule 26(d) is now familiar, obviating any need to carry forward the redundant cross-reference. The redundant reminder of Rule 37(c) in the second paragraph was likewise omitted.

#### **Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions.**

(a) *Motion for an Order Compelling Disclosure or Discovery.*

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.

(2) *Appropriate Court.* A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court where the discovery is or will be taken.

(3) *Specific Motions.*

(A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

- (i) a deponent fails to answer a question asked under Rule 30 or 31;
- (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);
- (iii) a party fails to answer an interrogatory submitted under Rule 33; or
- (iv) a party fails to respond that inspection will be permitted — or fails to permit inspection — as requested under Rule 34.



(C) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(4) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.

(5) *Payment of Expenses; Protective Orders.*

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted — or if the disclosure or requested discovery is provided after the motion was filed — the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied.* If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) *Failure to Comply with a Court Order.*

(1) *Sanctions in the District Where the Deposition Is Taken.* If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) *Sanctions in the District Where the Action Is Pending.*

(A) *For Not Obeying a Discovery Order.* If a party or a party's officer, director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4) — fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)-(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses.* Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the



failure was substantially justified or other circumstances make an award of expenses unjust.

(c) *Failure to Disclose, to Supplement an Earlier Response, or to Admit.*

(1) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(2) *Failure to Admit.* If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(A) the request was held objectionable under Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) *Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.*

(1) *In General.*

(A) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(B) *Certification.* A motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action.

(2) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(e) *Failure to Provide Electronically Stored Information.* Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(f) *Failure to Participate in Framing a Discovery Plan.* If a party or its attorney fails to participate in good faith in developing and submitting a proposed discovery plan as required by Rule 26(f), the court may, after giving an opportunity to be heard, require that party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(Amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted March 30, 1970, effective July 1, 1970, by order adopted April 29, 1980, effective August 1, 1980, by order adopted October 21, 1980, effective October 1, 1981, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 17, 2000, effective December 1, 2000; by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 37 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Committee Note — Subdivision (f).** Subdivision (f) is new. It focuses on a distinctive feature of computer operations, the routine alteration and deletion of information that attends ordinary use. Many steps essential to computer operation may alter or destroy information, for reasons that have nothing to do with how that information might relate to litigation. As a result, the ordinary operation of computer systems creates a risk that a party may lose potentially discoverable information without culpable conduct on its part. Under Rule 37(f), absent exceptional circumstances, sanctions cannot be imposed for loss of electronically stored information resulting from the routine, good-faith operation of an electronic information system.

## TITLE VI. TRIALS

### Rule 38. Right to a Jury Trial; Demand.

(a) *Right Preserved.* The right of trial by jury as declared by the Seventh Amendment to the Constitution — or as provided by a federal statute — is preserved to the parties inviolate.

(b) *Demand.* On any issue triable of right by a jury, a party may demand a jury trial by:

(1) serving the other parties with a written demand — which may be included in a pleading — no later than 14 days after the last pleading directed to the issue is served; and

(2) filing the demand in accordance with Rule 5(d).

(c) *Specifying Issues.* In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, it is considered to have demanded a jury trial on all the issues so triable. If the party has demanded a jury trial on only some issues, any other party may — within 14 days after being served with the demand or within a shorter time ordered by the court — serve a demand for a jury trial on any other or all factual issues triable by jury.

(d) *Waiver; Withdrawal.* A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

(e) *Admiralty and Maritime Claims.* These rules do not create a right to a jury trial on issues in a claim that is an admiralty or maritime claim under Rule 9(h).

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 38 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6. [12/1/09]



**Rule 39. Trial by Jury or by the Court.**

(a) *When a Demand Is Made.* When a jury trial has been demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that on some or all of those issues there is no federal right to a jury trial.

(b) *When No Demand Is Made.* Issues on which a jury trial is not properly demanded are to be tried by the court. But the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

(c) *Advisory Jury; Jury Trial by Consent.* In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, try any issue by a jury whose verdict has the same effect as if a jury trial had been a matter of right, unless the action is against the United States and a federal statute provides for a nonjury trial.

(Amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 39 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 40. Scheduling Cases for Trial.**

Each court must provide by rule for scheduling trials. The court must give priority to actions entitled to priority by a federal statute.

(Amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 40 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 41. Dismissal of Actions.**

(a) *Voluntary Dismissal.*

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if



the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) *Involuntary Dismissal; Effect.* If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule — except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 — operates as an adjudication on the merits.

(c) *Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.* This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) *Costs of a Previously Dismissed Action.* If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted December 4, 1967, effective July 1, 1968, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 41 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

When Rule 23 was amended in 1966, Rules 23.1 and 23.2 were separated from Rule 23. Rule 41(a)(1) was not then amended to reflect the Rule 23 changes. In 1968 Rule 41(a)(1) was amended to correct the cross-reference to what had become Rule 23(e), but Rules 23.1 and 23.2 were inadvertently overlooked. Rules 23.1 and 23.2 are now added to the list of exceptions in Rule 41(a)(1)(A). This change does not affect established meaning. Rule 23.2 explicitly incorporates Rule 23(e), and thus was already absorbed directly into the exceptions in Rule 41(a)(1). Rule 23.1 requires court approval of a compromise or dismissal in language parallel to Rule 23(e) and thus supersedes the apparent right to dismiss by notice of dismissal.

#### Rule 42. Consolidation; Separate Trials.

(a) *Consolidation.* If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) *Separate Trials.* For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any federal right to a jury trial.

(Amended by order adopted February 28, 1966, effective July 1, 1966; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 42 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 43. Taking Testimony.**

(a) *In Open Court.* At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) *Affirmation Instead of an Oath.* When these rules require an oath, a solemn affirmation suffices.

(c) *Evidence on a Motion.* When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(d) *Interpreter.* The court may appoint an interpreter of its choosing; fix reasonable compensation to be paid from funds provided by law or by one or more parties; and tax the compensation as costs.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted November 20, 1972 and December 18, 1972, effective July 1, 1975, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 23, 1996, effective December 1, 1996; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 43 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 44. Proving an Official Record.**

(a) *Means of Proving.*

(1) *Domestic Record.* Each of the following evidences an official record — or an entry in it — that is otherwise admissible and is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record — or by the officer's deputy — and accompanied by a certificate that the officer has custody. The certificate must be made under seal:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) *Foreign Record.*

(A) *In General.* Each of the following evidences a foreign official record — or an entry in it — that is otherwise admissible:

(i) an official publication of the record; or

(ii) the record — or a copy — that is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness.* A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof.* If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the record to be evidenced by an attested summary with or without a final certification.

(b) *Lack of a Record.* A written statement that a diligent search of designated records revealed no record or entry of a specified tenor is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2)(C)(ii).

(c) *Other Proof.* A party may prove an official record — or an entry or lack of an entry in it — by any other method authorized by law.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 44 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

#### Rule 44.1. Determining Foreign Law.

A party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted November 20, 1972, effective July 1, 1975, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 44.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

#### Rule 45. Subpoena.

(a) *In General.*

(1) *Form and Contents.*

(A) *Requirements — In General.* Every subpoena must:

(i) state the court from which it issued;

(ii) state the title of the action, the court in which it is pending, and its civil-action number;



(iii) command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

(iv) set out the text of Rule 45(c) and (d).

(B) *Command to Attend a Deposition — Notice of the Recording Method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(C) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) *Command to Produce; Included Obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

(2) *Issued from Which Court.* A subpoena must issue as follows:

(A) for attendance at a hearing or trial, from the court for the district where the hearing or trial is to be held;

(B) for attendance at a deposition, from the court for the district where the deposition is to be taken; and

(C) for production or inspection, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.

(3) *Issued by Whom.* The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena as an officer of:

(A) a court in which the attorney is authorized to practice; or

(B) a court for a district where a deposition is to be taken or production is to be made, if the attorney is authorized to practice in the court where the action is pending.

(b) *Service.*

(1) *By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered when the subpoena issues on behalf of the United States or any of its officers or agencies. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice must be served on each party.

(2) *Service in the United States.* Subject to Rule 45(c)(3)(A)(ii), a subpoena may be served at any place:

(A) within the district of the issuing court;

(B) outside that district but within 100 miles of the place specified for the deposition, hearing, trial, production, or inspection;

(C) within the state of the issuing court if a state statute or court rule allows service at that place of a subpoena issued by a state court of general jurisdiction sitting in the place specified for the deposition, hearing, trial, production, or inspection; or

(D) that the court authorizes on motion and for good cause, if a federal statute so provides.

(3) *Service in a Foreign Country.* 28 U.S.C. § 1783 governs issuing and serving a subpoena directed to a United States national or resident who is in a foreign country.

(4) *Proof of Service.* Proving service, when necessary, requires filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(c) *Protecting a Person Subject to a Subpoena.*

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) *Duties in Responding to a Subpoena.*

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.



(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted March 30, 1970, effective July 1, 1970, by order adopted April 29, 1980, effective August 1, 1980, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991; by order adopted April 25, 2005, effective December 1, 2005, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 45 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The reference to discovery of “books” in former Rule 45(a)(1)(C) was deleted to achieve consistent expression throughout the discovery rules. Books remain a proper subject of discovery.

Former Rule 45(b)(1) required “prior notice” to each party of any commanded production of documents and things or inspection of premises. Courts have agreed that notice must be given “prior” to the return date, and have tended to converge on an interpretation that requires notice to the parties before the subpoena is served on the person commanded



to produce or permit inspection. That interpretation is adopted in amended Rule 45(b)(1) to give clear notice of general present practice.

The language of former Rule 45(d)(2) addressing the manner of asserting privilege is replaced by adopting the wording of Rule 26(b)(5). The same meaning is better expressed in the same words.

### **Rule 46. Objecting to a Ruling or Order.**

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

(Amended by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

#### **COMMENT**

The language of Rule 46 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 47. Selecting Jurors.**

(a) *Examining Jurors.* The court may permit the parties or their attorneys to examine prospective jurors or may itself do so. If the court examines the jurors, it must permit the parties or their attorneys to make any further inquiry it considers proper, or must itself ask any of their additional questions it considers proper.

(b) *Peremptory Challenges.* The court must allow the number of peremptory challenges provided by 28 U.S.C. § 1870.

(c) *Excusing a Juror.* During trial or deliberation, the court may excuse a juror for good cause.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 30, 1991, effective December 1, 1991; amended, effective December 1, 2007.)

#### **COMMENT**

The language of Rule 47 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 48. Number of Jurors; Verdict; Polling.**

(a) *Number of Jurors.* A jury must begin with at least 6 and no more than 12 members, and each juror must participate in the verdict unless excused under Rule 47(c).

(b) *Verdict.* Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) *Polling.* After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

(Amended by order adopted April 30, 1991, effective December 1, 1991; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The language of Rule 48 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

Jury polling is added as new subdivision (c), which is drawn from Criminal Rule 31(d) with minor revisions to reflect Civil Rules Style and the parties' opportunity to stipulate to a nonunanimous verdict. [12/1/09]

**Rule 49. Special Verdict; General Verdict and Questions.****(a) *Special Verdict.***

(1) *In General.* The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

- (A) submitting written questions susceptible of a categorical or other brief answer;
- (B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or
- (C) using any other method that the court considers appropriate.

(2) *Instructions.* The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) *Issues Not Submitted.* A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

**(b) *General Verdict with Answers to Written Questions.***

(1) *In General.* The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) *Verdict and Answers Consistent.* When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) *Answers Inconsistent with the Verdict.* When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

- (A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;
- (B) direct the jury to further consider its answers and verdict; or
- (C) order a new trial.

(4) *Answers Inconsistent with Each Other and the Verdict.* When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

(Amended by order adopted January 21, 1963, effective July 1, 1963, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 49 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling.****(a) *Judgment as a Matter of Law.***



(1) *In General.* If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) *Motion.* A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) *Renewing the Motion After Trial; Alternative Motion for a New Trial.* If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment — or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged — the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) *Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.*

(1) *In General.* If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) *Effect of a Conditional Ruling.* Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) *Time for a Losing Party's New-Trial Motion.* Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 28 days after the entry of the judgment.

(e) *Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal.* If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

(Amended by order adopted January 21, 1963, effective July 1, 1963, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 27, 1995, effective December 1, 1995, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The language of Rule 50 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 50(b) stated that the court reserves ruling on a motion for judgment as a matter of law made at the close of all the evidence “[i]f, for any reason, the court does not grant” the motion. The words “for any reason” reflected the proposition that the reservation is automatic and inescapable. The ruling is reserved even if the court explicitly denies the



motion. The same result follows under the amended rule. If the motion is not granted, the ruling is reserved.

Amended Rule 50(e) identifies the appellate court's authority to direct the entry of judgment. This authority was not described in former Rule 50(d), but was recognized in *Weisgram v. Marley Co.*, 528 U.S. 440 (2000), and in *Neely v. Martin K. Eby Construction Company*, 386 U.S. 317 (1967). When Rule 50(d) was drafted in 1963, the Committee Note stated that “[s]ubdivision (d) does not attempt a regulation of all aspects of the procedure where the motion for judgment n.o.v. and any accompanying motion for a new trial are denied \* \* \*.” Express recognition of the authority to direct entry of judgment does not otherwise supersede this caution. [12/1/07]

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period. [12/1/09]

### **Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error.**

#### **(a) Requests.**

(1) *Before or at the Close of the Evidence.* At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give.

(2) *After the Close of the Evidence.* After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and

(B) with the court's permission, file untimely requests for instructions on any issue.

#### **(b) Instructions.** The court:

(1) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(2) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and

(3) may instruct the jury at any time before the jury is discharged.

#### **(c) Objections.**

(1) *How to Make.* A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) *When to Make.* An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(2); or

(B) a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

#### **(d) Assigning Error; Plain Error.**

(1) *Assigning Error.* A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and — unless the court rejected the request in a definitive ruling on the record — also properly objected.

(2) *Plain Error.* A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

(Amended by order adopted March 2, 1987, effective August 1, 1987, by order adopted March 27, 2003, effective December 1, 2003; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 51 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings.***(a) Findings and Conclusions.*

(1) *In General.* In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) *For a Motion.* The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings.* A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) *Amended or Additional Findings.* On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) *Judgment on Partial Findings.* If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted April 28, 1983, effective August 1, 1983, by order adopted April 29, 1985, effective August 1, 1985, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 27, 1995, effective December 1, 1995; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The language of Rule 52 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 52(a) said that findings are unnecessary on decisions of motions "except as provided in subdivision (c) of this rule." Amended Rule 52(a)(3) says that findings are unnecessary "unless these rules provide otherwise." This change reflects provisions in other rules that require Rule 52 findings on deciding motions. Rules 23(e), 23(h), and 54(d)(2)(C) are examples.



Amended Rule 52(a)(5) includes provisions that appeared in former Rule 52(a) and 52(b). Rule 52(a) provided that requests for findings are not necessary for purposes of review. It applied both in an action tried on the facts without a jury and also in granting or refusing an interlocutory injunction. Rule 52(b), applicable to findings “made in actions tried without a jury,” provided that the sufficiency of the evidence might be “later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.” Former Rule 52(b) did not explicitly apply to decisions granting or refusing an interlocutory injunction. Amended Rule 52(a)(5) makes explicit the application of this part of former Rule 52(b) to interlocutory injunction decisions.

Former Rule 52(c) provided for judgment on partial findings, and referred to it as “judgment as a matter of law.” Amended Rule 52(c) refers only to “judgment,” to avoid any confusion with a Rule 50 judgment as a matter of law in a jury case. The standards that govern judgment as a matter of law in a jury case have no bearing on a decision under Rule 52(c). [12/1/07]

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period. [12/1/09]

### **Rule 53. Masters.**

#### **(a) Appointment.**

(1) *Scope.* Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

(2) *Disqualification.* A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the court’s approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) *Possible Expense or Delay.* In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

#### **(b) Order Appointing a Master.**

(1) *Notice.* Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) *Contents.* The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master’s duties, including any investigation or enforcement duties, and any limits on the master’s authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master’s activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master’s orders, findings, and recommendations; and



(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) *Issuing.* The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) *Amending.* The order may be amended at any time after notice to the parties and an opportunity to be heard.

(c) *Master's Authority.*

(1) *In General.* Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) *Sanctions.* The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) *Master's Orders.* A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) *Master's Reports.* A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) *Action on the Master's Order, Report, or Recommendations.*

(1) *Opportunity for a Hearing; Action in General.* In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) *Time to Object or Move to Adopt or Modify.* A party may file objections to — or a motion to adopt or modify — the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time.

(3) *Reviewing Factual Findings.* The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

(4) *Reviewing Legal Conclusions.* The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) *Reviewing Procedural Matters.* Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) *Compensation.*

(1) *Fixing Compensation.* Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) *Payment.* The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) *Allocating Payment.* The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(h) *Appointing a Magistrate Judge.* A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 28, 1983, effective August 1, 1983, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted March 27, 2003, effective December 1, 2003; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The language of Rule 53 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6. [12/1/09]

## TITLE VII. JUDGMENT

### Rule 54. Judgment; Costs.

(a) *Definition; Form.* “Judgment” as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master’s report, or a record of prior proceedings.

(b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.

(c) *Demand for Judgment; Relief to Be Granted.* A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) *Costs; Attorney’s Fees.*

(1) *Costs Other Than Attorney’s Fees.* Unless a federal statute, these rules, or a court order provides otherwise, costs — other than attorney’s fees — should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days’ notice. On motion served within the next 7 days, the court may review the clerk’s action.

(2) *Attorney’s Fees.*

(A) *Claim to Be by Motion.* A claim for attorney’s fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) *Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must:

- (i) be filed no later than 14 days after the entry of judgment;
- (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
- (iii) state the amount sought or provide a fair estimate of it; and
- (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) *Proceedings.* Subject to Rule 23(h), the court must, on a party’s request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving



submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) *Special Procedures by Local Rule; Reference to a Master or a Magistrate Judge.* By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1), and may refer a motion for attorney's fees to a magistrate judge under Rule 72(b) as if it were a dispositive pretrial matter.

(E) *Exceptions.* Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted April 17, 1961, effective July 19, 1961, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 2002, effective December 1, 2002, by order adopted March 27, 2003, effective December 1, 2003; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 54 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The words "or class member" have been removed from Rule 54(d)(2)(C) because Rule 23(h)(2) now addresses objections by class members to attorney-fee motions. Rule 54(d)(2)(C) is amended to recognize that Rule 23(h) now controls those aspects of attorney-fee motions in class actions to which it is addressed. [12/1/07]

Former Rule 54(d)(1) provided that the clerk may tax costs on 1 day's notice. That period was unrealistically short. The new 14-day period provides a better opportunity to prepare and present a response. The former 5-day period to serve a motion to review the clerk's action is extended to 7 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days. [12/1/09]

### Rule 55. Default; Default Judgment.

(a) *Entering a Default.* When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) *Entering a Default Judgment.*

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk — on the plaintiff's request, with an affidavit showing the amount due — must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *By the Court.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any federal statutory right to a jury trial — when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter.



(c) *Setting Aside a Default or a Default Judgment.* The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

(d) *Judgment Against the United States.* A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(Amended by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The language of Rule 55 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 55(a) directed the clerk to enter a default when a party failed to plead or otherwise defend “as provided by these rules.” The implication from the reference to defending “as provided by these rules” seemed to be that the clerk should enter a default even if a party did something showing an intent to defend, but that act was not specifically described by the rules. Courts in fact have rejected that implication. Acts that show an intent to defend have frequently prevented a default even though not connected to any particular rule. “[A]s provided by these rules” is deleted to reflect Rule 55(a)’s actual meaning.

Amended Rule 55 omits former Rule 55(d), which included two provisions. The first recognized that Rule 55 applies to described claimants. The list was incomplete and unnecessary. Rule 55(a) applies Rule 55 to any party against whom a judgment for affirmative relief is requested. The second provision was a redundant reminder that Rule 54(c) limits the relief available by default judgment. [12/1/07]

The time set in the former rule at 3 days has been revised to 7 days. See the Note to Rule 6. [12/1/09]

## Rule 56. Summary Judgment.

(a) *Motion for Summary Judgment or Partial Summary Judgment.* A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) *Time to File a Motion.* Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) *Procedures.*

(1) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) *When Facts Are Unavailable to the Nonmovant.* If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

(e) *Failing to Properly Support or Address a Fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or
- (4) issue any other appropriate order.

(f) *Judgment Independent of the Motion.* After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) *Failing to Grant All the Requested Relief.* If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

(h) *Affidavit or Declaration Submitted in Bad Faith.* If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009; amended, effective December 1, 2010.)

## COMMENT

The language of Rule 56 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 56(a) and (b) referred to summary-judgment motions on or against a claim, counterclaim, or crossclaim, or to obtain a declaratory judgment. The list was incomplete. Rule 56 applies to third-party claimants, intervenors, claimants in interpleader, and others. Amended Rule 56(a) and (b) carry forward the present meaning by referring to a party claiming relief and a party against whom relief is sought.

Former Rule 56(c), (d), and (e) stated circumstances in which summary judgment “shall be rendered,” the court “shall if practicable” ascertain facts existing without substantial controversy, and “if appropriate, shall” enter summary judgment. In each place “shall” is changed to “should.” It is established that although there is no discretion to enter summary judgment when there is a genuine issue as to any material fact, there is discretion to deny summary judgment when it appears that there is no genuine issue as to any material fact.



*Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256-257 (1948). Many lower court decisions are gathered in 10A Wright, Miller & Kane, Federal Practice & Procedure: Civil 3d, § 2728. “Should” in amended Rule 56(c) recognizes that courts will seldom exercise the discretion to deny summary judgment when there is no genuine issue as to any material fact. Similarly sparing exercise of this discretion is appropriate under Rule 56(e)(2). Rule 56(d)(1), on the other hand, reflects the more open-ended discretion to decide whether it is practicable to determine what material facts are not genuinely at issue.

Former Rule 56(d) used a variety of different phrases to express the Rule 56(c) standard for summary judgment—that there is no genuine issue as to any material fact. Amended Rule 56(d) adopts terms directly parallel to Rule 56(c). [12/1/07]

The timing provisions for summary judgment are outmoded. They are consolidated and substantially revised in new subdivision (c)(1). The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. If the motion seems premature both subdivision (c)(1) and Rule 6(b) allow the court to extend the time to respond. The rule does set a presumptive deadline at 30 days after the close of all discovery.

The presumptive timing rules are default provisions that may be altered by an order in the case or by local rule. Scheduling orders are likely to supersede the rule provisions in most cases, deferring summary-judgment motions until a stated time or establishing different deadlines. Scheduling orders tailored to the needs of the specific case, perhaps adjusted as it progresses, are likely to work better than default rules. A scheduling order may be adjusted to adopt the parties’ agreement on timing, or may require that discovery and motions occur in stages — including separation of expert-witness discovery from other discovery.

Local rules may prove useful when local docket conditions or practices are incompatible with the general Rule 56 timing provisions.

If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due. [12/1/09]

Rule 56 is revised to improve the procedures for presenting and deciding summary-judgment motions and to make the procedures more consistent with those already used in many courts. The standard for granting summary judgment remains unchanged. The language of subdivision (a) continues to require that there be no genuine dispute as to any material fact and that the movant be entitled to judgment as a matter of law. The amendments will not affect continuing development of the decisional law construing and applying these phrases.

**Subdivision (a).** Subdivision (a) carries forward the summary-judgment standard expressed in former subdivision (c), changing only one word — genuine “issue” becomes genuine “dispute.” “Dispute” better reflects the focus of a summary-judgment determination. As explained below, “shall” also is restored to the place it held from 1938 to 2007.

The first sentence is added to make clear at the beginning that summary judgment may be requested not only as to an entire case but also as to a claim, defense, or part of a claim or defense. The subdivision caption adopts the common phrase “partial summary judgment” to describe disposition of less than the whole action, whether or not the order grants all the relief requested by the motion.

“Shall” is restored to express the direction to grant summary judgment. The word “shall” in Rule 56 acquired significance over many decades of use. Rule 56 was amended in 2007 to replace “shall” with “should” as part of the Style Project, acting under a convention that prohibited any use of “shall.” Comments on proposals to amend Rule 56, as published in 2008, have shown that neither of the choices available under the Style Project conventions — “must” or “should” — is suitable in light of the case law on whether a district court has discretion to deny summary judgment when there appears to be no genuine dispute as to any material fact. Compare *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (“Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case in which there is reason to believe that the better course would be to proceed to a full trial. *Kennedy v. Silas Mason Co.*, 334 U.S. 249 \* \* \* (1948)),” with *Celotex Corp. v. Catrett*,



477 U.S. 317, 322 (1986) (“In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.”). Eliminating “shall” created an unacceptable risk of changing the summary-judgment standard. Restoring “shall” avoids the unintended consequences of any other word.

Subdivision (a) also adds a new direction that the court should state on the record the reasons for granting or denying the motion. Most courts recognize this practice. Among other advantages, a statement of reasons can facilitate an appeal or subsequent trial-court proceedings. It is particularly important to state the reasons for granting summary judgment. The form and detail of the statement of reasons are left to the court’s discretion.

The statement on denying summary judgment need not address every available reason. But identification of central issues may help the parties to focus further proceedings.

**Subdivision (b).** The timing provisions in former subdivisions (a) and (c) are superseded. Although the rule allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time to file a responsive pleading or other pretrial proceedings have been had. Scheduling orders or other pretrial orders can regulate timing to fit the needs of the case.

**Subdivision (c).** Subdivision (c) is new. It establishes a common procedure for several aspects of summary-judgment motions synthesized from similar elements developed in the cases or found in many local rules.

Subdivision (c)(1) addresses the ways to support an assertion that a fact can or cannot be genuinely disputed. It does not address the form for providing the required support. Different courts and judges have adopted different forms including, for example, directions that the support be included in the motion, made part of a separate statement of facts, interpolated in the body of a brief or memorandum, or provided in a separate statement of facts included in a brief or memorandum.

Subdivision (c)(1)(A) describes the familiar record materials commonly relied upon and requires that the movant cite the particular parts of the materials that support its fact positions. Materials that are not yet in the record — including materials referred to in an affidavit or declaration — must be placed in the record. Once materials are in the record, the court may, by order in the case, direct that the materials be gathered in an appendix, a party may voluntarily submit an appendix, or the parties may submit a joint appendix. The appendix procedure also may be established by local rule. Pointing to a specific location in an appendix satisfies the citation requirement. So too it may be convenient to direct that a party assist the court in locating materials buried in a voluminous record.

Subdivision (c)(1)(B) recognizes that a party need not always point to specific record materials. One party, without citing any other materials, may respond or reply that materials cited to dispute or support a fact do not establish the absence or presence of a genuine dispute. And a party who does not have the trial burden of production may rely on a showing that a party who does have the trial burden cannot produce admissible evidence to carry its burden as to the fact.

Subdivision (c)(2) provides that a party may object that material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. The objection functions much as an objection at trial, adjusted for the pretrial setting. The burden is on the proponent to show that the material is admissible as presented or to explain the admissible form that is anticipated. There is no need to make a separate motion to strike. If the case goes to trial, failure to challenge admissibility at the summary-judgment stage does not forfeit the right to challenge admissibility at trial.

Subdivision (c)(3) reflects judicial opinions and local rules provisions stating that the court may decide a motion for summary judgment without undertaking an independent search of the record. Nonetheless, the rule also recognizes that a court may consider record materials not called to its attention by the parties.

Subdivision (c)(4) carries forward some of the provisions of former subdivision (e)(1). Other provisions are relocated or omitted. The requirement that a sworn or certified copy of a paper referred to in an affidavit or declaration be attached to the affidavit or declaration

is omitted as unnecessary given the requirement in subdivision (c)(1)(A) that a statement or dispute of fact be supported by materials in the record.

A formal affidavit is no longer required. 28 U.S.C. § 1746 allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit.

**Subdivision (d).** Subdivision (d) carries forward without substantial change the provisions of former subdivision (f).

A party who seeks relief under subdivision (d) may seek an order deferring the time to respond to the summary-judgment motion.

**Subdivision (e).** Subdivision (e) addresses questions that arise when a party fails to support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c). As explained below, summary judgment cannot be granted by default even if there is a complete failure to respond to the motion, much less when an attempted response fails to comply with Rule 56(c) requirements. Nor should it be denied by default even if the movant completely fails to reply to a nonmovant's response. Before deciding on other possible action, subdivision (e)(1) recognizes that the court may afford an opportunity to properly support or address the fact. In many circumstances this opportunity will be the court's preferred first step.

Subdivision (e)(2) authorizes the court to consider a fact as undisputed for purposes of the motion when response or reply requirements are not satisfied. This approach reflects the "deemed admitted" provisions in many local rules. The fact is considered undisputed only for purposes of the motion; if summary judgment is denied, a party who failed to make a proper Rule 56 response or reply remains free to contest the fact in further proceedings. And the court may choose not to consider the fact as undisputed, particularly if the court knows of record materials that show grounds for genuine dispute.

Subdivision (e)(3) recognizes that the court may grant summary judgment only if the motion and supporting materials — including the facts considered undisputed under subdivision (e)(2) — show that the movant is entitled to it. Considering some facts undisputed does not of itself allow summary judgment. If there is a proper response or reply as to some facts, the court cannot grant summary judgment without determining whether those facts can be genuinely disputed. Once the court has determined the set of facts — both those it has chosen to consider undisputed for want of a proper response or reply and any that cannot be genuinely disputed despite a procedurally proper response or reply — it must determine the legal consequences of these facts and permissible inferences from them.

Subdivision (e)(4) recognizes that still other orders may be appropriate. The choice among possible orders should be designed to encourage proper presentation of the record. Many courts take extra care with pro se litigants, advising them of the need to respond and the risk of losing by summary judgment if an adequate response is not filed. And the court may seek to reassure itself by some examination of the record before granting summary judgment against a pro se litigant.

**Subdivision (f).** Subdivision (f) brings into Rule 56 text a number of related procedures that have grown up in practice. After giving notice and a reasonable time to respond the court may grant summary judgment for the nonmoving party; grant a motion on legal or factual grounds not raised by the parties; or consider summary judgment on its own. In many cases it may prove useful first to invite a motion; the invited motion will automatically trigger the regular procedure of subdivision (c).

**Subdivision (g).** Subdivision (g) applies when the court does not grant all the relief requested by a motion for summary judgment. It becomes relevant only after the court has applied the summary-judgment standard carried forward in subdivision (a) to each claim, defense, or part of a claim or defense, identified by the motion. Once that duty is discharged, the court may decide whether to apply the summary-judgment standard to dispose of a material fact that is not genuinely in dispute. The court must take care that this determination does not interfere with a party's ability to accept a fact for purposes of the motion only. A nonmovant, for example, may feel confident that a genuine dispute as to one or a few facts will defeat the motion, and prefer to avoid the cost of detailed response to all facts stated by the movant. This position should be available without running the risk



that the fact will be taken as established under subdivision (g) or otherwise found to have been accepted for other purposes.

If it is readily apparent that the court cannot grant all the relief requested by the motion, it may properly decide that the cost of determining whether some potential fact disputes may be eliminated by summary disposition is greater than the cost of resolving those disputes by other means, including trial. Even if the court believes that a fact is not genuinely in dispute it may refrain from ordering that the fact be treated as established. The court may conclude that it is better to leave open for trial facts and issues that may be better illuminated by the trial of related facts that must be tried in any event.

**Subdivision (h).** Subdivision (h) carries forward former subdivision (g) with three changes. Sanctions are made discretionary, not mandatory, reflecting the experience that courts seldom invoke the independent Rule 56 authority to impose sanctions. *See Cecil & Cort, Federal Judicial Center Memorandum on Federal Rule of Civil Procedure 56(g) Motions for Sanctions* (April 2, 2007). In addition, the rule text is expanded to recognize the need to provide notice and a reasonable time to respond. Finally, authority to impose other appropriate sanctions also is recognized.

### **Rule 57. Declaratory Judgment.**

These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

(Amended by order adopted December 29, 1948, effective October 20, 1949; amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 57 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 58. Entering Judgment.**

(a) *Separate Document.* Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

- (1) for judgment under Rule 50(b);
- (2) to amend or make additional findings under Rule 52(b);
- (3) for attorney's fees under Rule 54;
- (4) for a new trial, or to alter or amend the judgment, under Rule 59; or
- (5) for relief under Rule 60.

(b) *Entering Judgment.*

(1) *Without the Court's Direction.* Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

- (A) the jury returns a general verdict;
- (B) the court awards only costs or a sum certain; or
- (C) the court denies all relief.

(2) *Court's Approval Required.* Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

- (A) the jury returns a special verdict or a general verdict with answers to written questions; or
- (B) the court grants other relief not described in this subdivision (b).

(c) *Time of Entry.* For purposes of these rules, judgment is entered at the following times:



(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(d) *Request for Entry*. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) *Cost or Fee Awards*. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 2002, effective December 1, 2002; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 58 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 59. New Trial; Altering or Amending a Judgment.**

#### *(a) In General.*

(1) *Grounds for New Trial*. The court may, on motion, grant a new trial on all or some of the issues — and to any party — as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial*. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) *Time to File a Motion for a New Trial*. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) *Time to Serve Affidavits*. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) *New Trial on the Court's Initiative or for Reasons Not in the Motion*. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) *Motion to Alter or Amend a Judgment*. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 27, 1995, effective December 1, 1995; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The language of Rule 59 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits any expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

Former Rule 59(c) set a 10-day period after being served with a motion for new trial to file opposing affidavits. It also provided that the period could be extended for up to 20 days for good cause or by stipulation. The apparent 20-day limit on extending the time to file opposing affidavits seemed to conflict with the Rule 6(b) authority to extend time without any specific limit. This tension between the two rules may have been inadvertent. It is resolved by deleting the former Rule 59(c) limit. Rule 6(b) governs. The underlying 10-day period was extended to 14 days to reflect the change in the Rule 6(a) method for computing periods of less than 11 days. [12/1/09]

**Rule 60. Relief from a Judgment or Order.**

(a) *Corrections Based on Clerical Mistakes; Oversights and Omissions.* The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) *Grounds for Relief from a Final Judgment, Order, or Proceeding.* On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

(c) *Timing and Effect of the Motion.*

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) *Other Powers to Grant Relief.* This rule does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or
- (3) set aside a judgment for fraud on the court.



(e) *Bills and Writs Abolished.* The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 60 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence of former Rule 60(b) said that the procedure for obtaining any relief from a judgment was by motion as prescribed in the Civil Rules or by an independent action. That provision is deleted as unnecessary. Relief continues to be available only as provided in the Civil Rules or by independent action.

### Rule 61. Harmless Error.

Unless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the court or a party — is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

(Amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 61 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 62. Stay of Proceedings to Enforce a Judgment.

(a) *Automatic Stay; Exceptions for Injunctions, Receiverships, and Patent Accountings.* Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:

(1) an interlocutory or final judgment in an action for an injunction or a receivership;  
or

(2) a judgment or order that directs an accounting in an action for patent infringement.

(b) *Stay Pending the Disposition of a Motion.* On appropriate terms for the opposing party's security, the court may stay the execution of a judgment — or any proceedings to enforce it — pending disposition of any of the following motions:

- (1) under Rule 50, for judgment as a matter of law;
- (2) under Rule 52(b), to amend the findings or for additional findings;
- (3) under Rule 59, for a new trial or to alter or amend a judgment; or
- (4) under Rule 60, for relief from a judgment or order.

(c) *Injunction Pending an Appeal.* While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a statutory three-judge district court, the order must be made either:

- (1) by that court sitting in open session; or
- (2) by the assent of all its judges, as evidenced by their signatures.



(d) *Stay with Bond on Appeal.* If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) *Stay Without Bond on an Appeal by the United States, Its Officers, or Its Agencies.* The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) *Stay in Favor of a Judgment Debtor Under State Law.* If a judgment is a lien on the judgment debtor's property under the law of the state where the court is located, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) *Appellate Court's Power Not Limited.* This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings — or suspend, modify, restore, or grant an injunction — while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) *Stay with Multiple Claims or Parties.* A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted April 17, 1961, effective July 19, 1961, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The language of Rule 62 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence of former Rule 62(a) referred to Rule 62(c). It is deleted as unnecessary. Rule 62(c) governs of its own force. [12/1/07]

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6. [12/1/09]

#### **Rule 62.1. Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal.**

(a) *Relief Pending Appeal.* If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;

(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) *Notice to the Court of Appeals.* The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) *Remand.* The district court may decide the motion if the court of appeals remands for that purpose.

(Added by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

This new rule adopts for any motion that the district court cannot grant because of a pending appeal the practice that most courts follow when a party makes a Rule 60(b) motion to vacate a judgment that is pending on appeal. After an appeal has been docketed and while it remains pending, the district court cannot grant a Rule 60(b) motion without a remand. But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the court of appeals remands for that purpose or state that the motion raises a substantial issue. Experienced lawyers often refer to the suggestion for remand as an “indicative ruling.” (Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)

This clear procedure is helpful whenever relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. Rule 62.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court’s authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appeal jurisdiction. Rule 62.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission. If the district court concludes that it has authority to grant relief without appellate permission, it can act without falling back on the indicative ruling procedure.

To ensure proper coordination of proceedings in the district court and in the appellate court, the movant must notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue. Remand is in the court of appeals’ discretion under Appellate Rule 12.1.

Often it will be wise for the district court to determine whether it in fact would grant the motion if the court of appeals remands for that purpose. But a motion may present complex issues that require extensive litigation and that may either be mooted or be presented in a different context by decision of the issues raised on appeal. In such circumstances the district court may prefer to state that the motion raises a substantial issue, and to state the reasons why it prefers to decide only if the court of appeals agrees that it would be useful to decide the motion before decision of the pending appeal. The district court is not bound to grant the motion after stating that the motion raises a substantial issue; further proceedings on remand may show that the motion ought not be granted. [12/1/09]

**Rule 63. Judge’s Inability to Proceed.**

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party’s request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(Amended by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 63 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**TITLE VIII. PROVISIONAL AND FINAL REMEDIES****Rule 64. Seizing a Person or Property.**

(a) *Remedies Under State Law — In General.* At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is



located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

(b) *Specific Kinds of Remedies.* The remedies available under this rule include the following — however designated and regardless of whether state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

(Amended, effective December 1, 2007.)

### COMMENT

The language of Rule 64 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 64 stated that the Civil Rules govern an action in which any remedy available under Rule 64(a) is used. The Rules were said to govern from the time the action is commenced if filed in federal court, and from the time of removal if removed from state court. These provisions are deleted as redundant. Rule 1 establishes that the Civil Rules apply to all actions in a district court, and Rule 81(c)(1) adds reassurance that the Civil Rules apply to a removed action “after it is removed.”

### Rule 65. Injunctions and Restraining Orders.

#### (a) *Preliminary Injunction.*

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party’s right to a jury trial.

#### (b) *Temporary Restraining Order.*

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk’s office and entered in the record. The order expires at the time after entry — not to exceed 14 days — that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.



(4) *Motion to Dissolve.* On 2 days' notice to the party who obtained the order without notice — or on shorter notice set by the court — the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) *Security.* The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The United States, its officers, and its agencies are not required to give security.

(d) *Contents and Scope of Every Injunction and Restraining Order.*

(1) *Contents.* Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail — and not by referring to the complaint or other document — the act or acts restrained or required.

(2) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) *Other Laws Not Modified.* These rules do not modify the following:

(1) any federal statute relating to temporary restraining orders or preliminary injunctions in actions affecting employer and employee;

(2) 28 U.S.C. § 2361, which relates to preliminary injunctions in actions of interpleader or in the nature of interpleader; or

(3) 28 U.S.C. § 2284, which relates to actions that must be heard and decided by a three-judge district court.

(f) *Copyright Impoundment.* This rule applies to copyright-impoundment proceedings.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 23, 2001, effective December 1, 2001; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The language of Rule 65 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The final sentence of former Rule 65(c) referred to Rule 65.1. It is deleted as unnecessary. Rule 65.1 governs of its own force.

Rule 65(d)(2) clarifies two ambiguities in former Rule 65(d). The former rule was adapted from former 28 U.S.C. § 363, but omitted a comma that made clear the common doctrine that a party must have actual notice of an injunction in order to be bound by it. Amended Rule 65(d) restores the meaning of the earlier statute, and also makes clear the proposition that an injunction can be enforced against a person who acts in concert with a party's officer, agent, servant, employee, or attorney. [12/1/07]

The time set in the former rule at 10 days has been revised to 14 days. See the Note to Rule 6. [12/1/09]

### Rule 65.1. Proceedings Against a Surety.

Whenever these rules (including the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions) require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the court clerk as its agent for

receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders may be served on the court clerk, who must promptly mail a copy of each to every surety whose address is known.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 65.1 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

#### Rule 66. Receivers.

These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

(Amended by order adopted December 27, 1946, effective March 19, 1948, and by order adopted December 29, 1948, effective October 20, 1949; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 66 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

#### Rule 67. Deposit into Court.

(a) *Depositing Property.* If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party — on notice to every other party and by leave of court — may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) *Investing and Withdrawing Funds.* Money paid into court under this rule must be deposited and withdrawn in accordance with 28 U.S.C. §§ 2041 and 2042 and any like statute. The money must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.

(Amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted April 28, 1983, effective August 1, 1983; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 67 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

#### Rule 68. Offer of Judgment.

(a) *Making an Offer; Judgment on an Accepted Offer.* At least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to



allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

(b) *Unaccepted Offer.* An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) *Offer After Liability is Determined.* When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time — but at least 14 days — before the date set for a hearing to determine the extent of liability.

(d) *Paying Costs After an Unaccepted Offer.* If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 68 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

Former Rule 68 allowed service of an offer of judgment more than 10 days before the trial begins, or — if liability has been determined — at least 10 days before a hearing to determine the extent of liability. It may be difficult to know in advance when trial will begin or when a hearing will be held. The time is now measured from the date set for trial or hearing; resetting the date establishes a new time for serving the offer.

The former 10-day periods are extended to 14 days to reflect the change in the Rule 6(a) method for computing periods less than 11 days. [12/1/09]

### Rule 69. Execution.

#### (a) *In General.*

(1) *Money Judgment; Applicable Procedure.* A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution — and in proceedings supplementary to and in aid of judgment or execution — must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery.* In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person — including the judgment debtor — as provided in these rules or by the procedure of the state where the court is located.

(b) *Against Certain Public Officers.* When a judgment has been entered against a revenue officer in the circumstances stated in 28 U.S.C. § 2006, or against an officer of Congress in the circumstances stated in 2 U.S.C. § 118, the judgment must be satisfied as those statutes provide.

(Amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted March 30, 1970, effective July 1, 1970, by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)



### COMMENT

The language of Rule 69 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Amended Rule 69(b) incorporates directly the provisions of 2 U.S.C. § 118 and 28 U.S.C. § 2006, deleting the incomplete statement in former Rule 69(b) of the circumstances in which execution does not issue against an officer.

### **Rule 70. Enforcing a Judgment for a Specific Act.**

(a) *Party's Failure to Act; Ordering Another to Act.* If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done — at the disobedient party's expense — by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) *Vesting Title.* If the real or personal property is within the district, the court — instead of ordering a conveyance — may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) *Obtaining a Writ of Attachment or Sequestration.* On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) *Obtaining a Writ of Execution or Assistance.* On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) *Holding in Contempt.* The court may also hold the disobedient party in contempt.

(Amended, effective December 1, 2007.)

### COMMENT

The language of Rule 70 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 71. Enforcing Relief for or Against a Nonparty.**

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

(Amended by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

### COMMENT

The language of Rule 71 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

## **TITLE IX. SPECIAL PROCEEDINGS**

### **Rule 71.1. Condemning Real or Personal Property.**

(a) *Applicability of Other Rules.* These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.

(b) *Joinder of Properties.* The plaintiff may join separate pieces of property in a single action, no matter whether they are owned by the same persons or sought for the same use.

(c) *Complaint.*

(1) *Caption.* The complaint must contain a caption as provided in Rule 10(a). The plaintiff must, however, name as defendants both the property — designated generally by kind, quantity, and location — and at least one owner of some part of or interest in the property.

(2) *Contents.* The complaint must contain a short and plain statement of the following:

- (A) the authority for the taking;
- (B) the uses for which the property is to be taken;
- (C) a description sufficient to identify the property;
- (D) the interests to be acquired; and
- (E) for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.

(3) *Parties.* When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired. All others may be made defendants under the designation "Unknown Owners."

(4) *Procedure.* Notice must be served on all defendants as provided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later. A defendant may answer as provided in Rule 71.1(e). The court, meanwhile, may order any distribution of a deposit that the facts warrant.

(5) *Filing; Additional Copies.* In addition to filing the complaint, the plaintiff must give the clerk at least one copy for the defendants' use and additional copies at the request of the clerk or a defendant.

(d) *Process.*

(1) *Delivering Notice to the Clerk.* On filing a complaint, the plaintiff must promptly deliver to the clerk joint or several notices directed to the named defendants. When adding defendants, the plaintiff must deliver to the clerk additional notices directed to the new defendants.

(2) *Contents of the Notice.*

(A) *Main Contents.* Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

- (i) that the action is to condemn property;
- (ii) the interest to be taken;
- (iii) the authority for the taking;
- (iv) the uses for which the property is to be taken;
- (v) that the defendant may serve an answer on the plaintiff's attorney within 21 days after being served with the notice;
- (vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and
- (vii) that a defendant who does not serve an answer may file a notice of appearance.

(B) *Conclusion.* The notice must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney and an address within the district in which the action is brought where the attorney may be served.

(3) *Serving the Notice.*

(A) *Personal Service.* When a defendant whose address is known resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.

(B) *Service by Publication.*

(i) A defendant may be served by publication only when the plaintiff's attorney files a certificate stating that the attorney believes the defendant cannot be person-



ally served, because after diligent inquiry within the state where the complaint is filed, the defendant's place of residence is still unknown or, if known, that it is beyond the territorial limits of personal service. Service is then made by publishing the notice — once a week for at least 3 successive weeks — in a newspaper published in the county where the property is located or, if there is no such newspaper, in a newspaper with general circulation where the property is located. Before the last publication, a copy of the notice must also be mailed to every defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication in the same manner by a notice addressed to "Unknown Owners."

(ii) Service by publication is complete on the date of the last publication. The plaintiff's attorney must prove publication and mailing by a certificate, attach a printed copy of the published notice, and mark on the copy the newspaper's name and the dates of publication.

(4) *Effect of Delivery and Service.* Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.

(5) *Amending the Notice; Proof of Service and Amending the Proof.* Rule 4(a)(2) governs amending the notice. Rule 4(l) governs proof of service and amending it.

(e) *Appearance or Answer.*

(1) *Notice of Appearance.* A defendant that has no objection or defense to the taking of its property may serve a notice of appearance designating the property in which it claims an interest. The defendant must then be given notice of all later proceedings affecting the defendant.

(2) *Answer.* A defendant that has an objection or defense to the taking must serve an answer within 21 days after being served with the notice. The answer must:

(A) identify the property in which the defendant claims an interest;

(B) state the nature and extent of the interest; and

(C) state all the defendant's objections and defenses to the taking.

(3) *Waiver of Other Objections and Defenses; Evidence on Compensation.* A defendant waives all objections and defenses not stated in its answer. No other pleading or motion asserting an additional objection or defense is allowed. But at the trial on compensation, a defendant — whether or not it has previously appeared or answered — may present evidence on the amount of compensation to be paid and may share in the award.

(f) *Amending Pleadings.* Without leave of court, the plaintiff may — as often as it wants — amend the complaint at any time before the trial on compensation. But no amendment may be made if it would result in a dismissal inconsistent with Rule 71.1(i)(1) or (2). The plaintiff need not serve a copy of an amendment, but must serve notice of the filing, as provided in Rule 5(b), on every affected party who has appeared and, as provided in Rule 71.1(d), on every affected party who has not appeared. In addition, the plaintiff must give the clerk at least one copy of each amendment for the defendants' use, and additional copies at the request of the clerk or a defendant. A defendant may appear or answer in the time and manner and with the same effect as provided in Rule 71.1(e).

(g) *Substituting Parties.* If a defendant dies, becomes incompetent, or transfers an interest after being joined, the court may, on motion and notice of hearing, order that the proper party be substituted. Service of the motion and notice on a nonparty must be made as provided in Rule 71.1(d)(3).

(h) *Trial of the Issues.*

(1) *Issues Other Than Compensation; Compensation.* In an action involving eminent domain under federal law, the court tries all issues, including compensation, except when compensation must be determined:

(A) by any tribunal specially constituted by a federal statute to determine compensation; or

(B) if there is no such tribunal, by a jury when a party demands one within the time to answer or within any additional time the court sets, unless the court appoints a commission.

(2) *Appointing a Commission; Commission's Powers and Report.*



(A) *Reasons for Appointing.* If a party has demanded a jury, the court may instead appoint a three-person commission to determine compensation because of the character, location, or quantity of the property to be condemned or for other just reasons.

(B) *Alternate Commissioners.* The court may appoint up to two additional persons to serve as alternate commissioners to hear the case and replace commissioners who, before a decision is filed, the court finds unable or disqualified to perform their duties. Once the commission renders its final decision, the court must discharge any alternate who has not replaced a commissioner.

(C) *Examining the Prospective Commissioners.* Before making its appointments, the court must advise the parties of the identity and qualifications of each prospective commissioner and alternate, and may permit the parties to examine them. The parties may not suggest appointees, but for good cause may object to a prospective commissioner or alternate.

(D) *Commission's Powers and Report.* A commission has the powers of a master under Rule 53(c). Its action and report are determined by a majority. Rule 53(d), (e), and (f) apply to its action and report.

(i) *Dismissal of the Action or a Defendant.*

(1) *Dismissing the Action.*

(A) *By the Plaintiff.* If no compensation hearing on a piece of property has begun, and if the plaintiff has not acquired title or a lesser interest or taken possession, the plaintiff may, without a court order, dismiss the action as to that property by filing a notice of dismissal briefly describing the property.

(B) *By Stipulation.* Before a judgment is entered vesting the plaintiff with title or a lesser interest in or possession of property, the plaintiff and affected defendants may, without a court order, dismiss the action in whole or in part by filing a stipulation of dismissal. And if the parties so stipulate, the court may vacate a judgment already entered.

(C) *By Court Order.* At any time before compensation has been determined and paid, the court may, after a motion and hearing, dismiss the action as to a piece of property. But if the plaintiff has already taken title, a lesser interest, or possession as to any part of it, the court must award compensation for the title, lesser interest, or possession taken.

(2) *Dismissing a Defendant.* The court may at any time dismiss a defendant who was unnecessarily or improperly joined.

(3) *Effect.* A dismissal is without prejudice unless otherwise stated in the notice, stipulation, or court order.

(j) *Deposit and Its Distribution.*

(1) *Deposit.* The plaintiff must deposit with the court any money required by law as a condition to the exercise of eminent domain and may make a deposit when allowed by statute.

(2) *Distribution; Adjusting Distribution.* After a deposit, the court and attorneys must expedite the proceedings so as to distribute the deposit and to determine and pay compensation. If the compensation finally awarded to a defendant exceeds the amount distributed to that defendant, the court must enter judgment against the plaintiff for the deficiency. If the compensation awarded to a defendant is less than the amount distributed to that defendant, the court must enter judgment against that defendant for the overpayment.

(k) *Condemnation Under a State's Power of Eminent Domain.* This rule governs an action involving eminent domain under state law. But if state law provides for trying an issue by jury — or for trying the issue of compensation by jury or commission or both — that law governs.

(l) *Costs.* Costs are not subject to Rule 54(d).

(Added by order adopted April 30, 1951, effective August 1, 1951, amended by order adopted January 21, 1963, effective July 1, 1963, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 25, 1988, effective August 1, 1988, by P.L. 100-690, effective

November 18, 1988, by order adopted April 22, 1993, effective December 1, 1993, by order adopted March 27, 2003, effective December 1, 2003; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 71A has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 71A has been redesignated as Rule 71.1 to conform to the designations used for all other rules added within the original numbering system. [12/1/07]

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6. [12/1/09]

### Rule 72. Magistrate Judges: Pretrial Order.

(a) *Nondispositive Matters.* When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

(b) *Dispositive Motions and Prisoner Petitions.*

(1) *Findings and Recommendations.* A magistrate judge must promptly conduct the required proceedings when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must promptly mail a copy to each party.

(2) *Objections.* Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.

(3) *Resolving Objections.* The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

(Added by order adopted April 28, 1983, effective August 1, 1983, amended by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The language of Rule 72 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. [12/1/07]

The times set in the former rule at 10 days have been revised to 14 days. See the Note to Rule 6. [12/1/09]



**Rule 73. Magistrate Judges; Trial by Consent; Appeal.**

(a) *Trial by Consent.* When authorized under 28 U.S.C. § 636(c), a magistrate judge may, if all parties consent, conduct a civil action or proceeding, including a jury or nonjury trial. A record must be made in accordance with 28 U.S.C. § 636(c)(5).

(b) *Consent Procedure.*

(1) *In General.* When a magistrate judge has been designated to conduct civil actions or proceedings, the clerk must give the parties written notice of their opportunity to consent under 28 U.S.C. § 636(c). To signify their consent, the parties must jointly or separately file a statement consenting to the referral. A district judge or magistrate judge may be informed of a party's response to the clerk's notice only if all parties have consented to the referral.

(2) *Reminding the Parties About Consenting.* A district judge, magistrate judge, or other court official may remind the parties of the magistrate judge's availability, but must also advise them that they are free to withhold consent without adverse substantive consequences.

(3) *Vacating a Referral.* On its own for good cause — or when a party shows extraordinary circumstances — the district judge may vacate a referral to a magistrate judge under this rule.

(c) *Appealing a Judgment.* In accordance with 28 U.S.C. § 636(c)(3), an appeal from a judgment entered at a magistrate judge's direction may be taken to the court of appeals as would any other appeal from a district-court judgment.

(Added by order adopted April 28, 1983, effective August 1, 1983, amended by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 11, 1997, effective December 1, 1997; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 73 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 74. Method of Appeal from Magistrate Judge to District Judge Under Title 28, U.S.C. § 636(c)(4) and Rule 73(d). [Abrogated].**

(Abrogated by order adopted April 11, 1997, effective December 1, 1997.)

**COMMENT**

Rule 74 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge's judgment to the district court. The rule number is reserved for possible future use.

**Rule 75. Proceedings on Appeal from Magistrate Judge to District Judge Under Rule 73(d). [Abrogated].**

(Abrogated by order adopted April 11, 1997, effective December 1, 1997.)

**COMMENT**

Rule 75 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge's judgment to the district court. The rule number is reserved for possible future use.

**Rule 76. Judgment of the District Judge on the Appeal Under Rule 73(d) and Costs. [Abrogated].**

(Abrogated by order adopted April 11, 1997, effective December 1, 1997.)



## COMMENT

Rule 76 was abrogated in 1997 to reflect repeal of the statute providing for appeal from a magistrate judge's judgment to the district court. The rule number is reserved for possible future use.

**TITLE X. DISTRICT COURTS AND CLERKS: CONDUCTING BUSINESS;  
ISSUING ORDERS****Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment.**

(a) *When Court Is Open.* Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) *Place for Trial and Other Proceedings.* Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. But no hearing — other than one ex parte — may be conducted outside the district unless all the affected parties consent.

(c) *Clerk's Office Hours; Clerk's Orders.*

(1) *Hours.* The clerk's office — with a clerk or deputy on duty — must be open during business hours every day except Saturdays, Sundays, and legal holidays. But a court may, by local rule or order, require that the office be open for specified hours on Saturday or a particular legal holiday other than one listed in Rule 6(a)(4)(A).

(2) *Orders.* Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may:

- (A) issue process;
- (B) enter a default;
- (C) enter a default judgment under Rule 55(b)(1); and
- (D) act on any other matter that does not require the court's action.

(d) *Serving Notice of an Order or Judgment.*

(1) *Service.* Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket. A party also may serve notice of the entry as provided in Rule 5(b).

(2) *Time to Appeal Not Affected by Lack of Notice.* Lack of notice of the entry does not affect the time for appeal or relieve — or authorize the court to relieve — a party for failing to appeal within the time allowed, except as allowed by Federal Rule of Appellate Procedure (4)(a).

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted January 21, 1963, effective July 1, 1963, by order adopted December 4, 1967, effective July 1, 1968, by order adopted March 1, 1971, effective July 1, 1971, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 23, 2001, effective December 1, 2001; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 77 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 78. Hearing Motions; Submission on Briefs.**

(a) *Providing a Regular Schedule for Oral Hearings.* A court may establish regular times and places for oral hearings on motions.

(b) *Providing for Submission on Briefs.* By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings.

(Amended by order adopted March 2, 1987, effective August 1, 1987; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 78 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 79. Records Kept by the Clerk.

(a) *Civil Docket.*

(1) *In General.* The clerk must keep a record known as the “civil docket” in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket. Actions must be assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made.

(2) *Items to be Entered.* The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) *Contents of Entries; Jury Trial Demanded.* Each entry must briefly show the nature of the paper filed or writ issued, the substance of each proof of service or other return, and the substance and date of entry of each order and judgment. When a jury trial has been properly demanded or ordered, the clerk must enter the word “jury” in the docket.

(b) *Civil Judgments and Orders.* The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(c) *Indexes; Calendars.* Under the court’s direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

(2) prepare calendars of all actions ready for trial, distinguishing jury trials from nonjury trials.

(d) *Other Records.* The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(Amended by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted January 21, 1963, effective July 1, 1963; amended, effective December 1, 2007.)

#### COMMENT

The language of Rule 79 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### Rule 80. Stenographic Transcript as Evidence.

If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.



(Amended by order adopted December 27, 1946, effective March 19, 1948; amended, effective December 1, 2007.)

## COMMENT

The language of Rule 80 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

## TITLE XI. GENERAL PROVISIONS

### Rule 81. Applicability of the Rules in General; Removed Actions.

#### (a) *Applicability to Particular Proceedings.*

(1) *Prize Proceedings.* These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§ 7651-7681.

(2) *Bankruptcy.* These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) *Citizenship.* These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. § 1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) *Special Writs.* These rules apply to proceedings for habeas corpus and for quo warranto to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

(5) *Proceedings Involving a Subpoena.* These rules apply to proceedings to compel testimony or the production of documents through a subpoena issued by a United States officer or agency under a federal statute, except as otherwise provided by statute, by local rule, or by court order in the proceedings.

(6) *Other Proceedings.* These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:

(A) 7 U.S.C. §§ 292, 499g(c), for reviewing an order of the Secretary of Agriculture;

(B) 9 U.S.C., relating to arbitration;

(C) 15 U.S.C. § 522, for reviewing an order of the Secretary of the Interior;

(D) 15 U.S.C. § 715d(c), for reviewing an order denying a certificate of clearance;

(E) 29 U.S.C. §§ 159, 160, for enforcing an order of the National Labor Relations Board;

(F) 33 U.S.C. §§ 918, 921, for enforcing or reviewing a compensation order under the Longshore and Harbor Workers' Compensation Act; and

(G) 45 U.S.C. § 159, for reviewing an arbitration award in a railway-labor dispute.

(b) *Scire Facias and Mandamus.* The writs of scire facias and mandamus are abolished. Relief previously available through them may be obtained by appropriate action or motion under these rules.

#### (c) *Removed Actions.*

(1) *Applicability.* These rules apply to a civil action after it is removed from a state court.

(2) *Further Pleading.* After removal, repleading is unnecessary unless the court orders it. A defendant who did not answer before removal must answer or present other defenses or objections under these rules within the longest of these periods:

(A) 21 days after receiving — through service or otherwise — a copy of the initial pleading stating the claim for relief;

(B) 21 days after being served with the summons for an initial pleading on file at the time of service; or



(C) 7 days after the notice of removal is filed.

(3) *Demand for a Jury Trial.*

(A) *As Affected by State Law.* A party who, before removal, expressly demanded a jury trial in accordance with state law need not renew the demand after removal. If the state law did not require an express demand for a jury trial, a party need not make one after removal unless the court orders the parties to do so within a specified time. The court must so order at a party's request and may so order on its own. A party who fails to make a demand when so ordered waives a jury trial.

(B) *Under Rule 38.* If all necessary pleadings have been served at the time of removal, a party entitled to a jury trial under Rule 38 must be given one if the party serves a demand within 14 days after:

(i) it files a notice of removal; or

(ii) it is served with a notice of removal filed by another party.

(d) *Law Applicable.*

(1) *"State Law" Defined.* When these rules refer to state law, the term "law" includes the state's statutes and the state's judicial decisions.

(2) *"State" Defined.* The term "state" includes, where appropriate, the District of Columbia and any United States commonwealth or territory.

(3) *"Federal Statute" Defined in the District of Columbia.* In the United States District Court for the District of Columbia, the term "federal statute" includes any Act of Congress that applies locally to the District.

(Amended by order adopted December 28, 1939, effective April 3, 1941, by order adopted December 27, 1946, effective March 19, 1948, by order adopted December 29, 1948, effective October 20, 1949, by order adopted April 30, 1951, effective August 1, 1951, by order adopted January 21, 1963, effective July 1, 1963, by order adopted February 28, 1966, effective July 1, 1966, by order adopted December 4, 1967, effective July 1, 1968, by order adopted March 1, 1971, effective July 1, 1971, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 23, 2001, effective December 1, 2001, by order adopted April 29, 2002, effective December 1, 2002; amended, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The language of Rule 81 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 81(c) has been revised to reflect the amendment of 28 U.S.C. § 1446(a) that changed the procedure for removal from a petition for removal to a notice of removal.

Former Rule 81(e), drafted before the decision in *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), defined state law to include "the statutes of that state and the state judicial decisions construing them." The *Erie* decision reinterpreted the Rules of Decision Act, now 28 U.S.C. § 1652, recognizing that the "laws" of the states include the common law established by judicial decisions. Long-established practice reflects this understanding, looking to state common law as well as statutes and court rules when a Civil Rule directs use of state law. Amended Rule 81(d)(1) adheres to this practice, including all state judicial decisions, not only those that construe state statutes.

Former Rule 81(f) is deleted. The office of district director of internal revenue was abolished by restructuring under the Internal Revenue Service Restructuring and Reform Act of 1998, Pub.L. 105-206, July 22, 1998, 26 U.S.C. § 1 Note. [12/1/07]

The times set in the former rule at 5, 10, and 20 days have been revised to 7, 14, and 21 days, respectively. See the Note to Rule 6.

Several Rules incorporate local state practice. Rule 81(d) now provides that "the term 'state' includes, where appropriate, the District of Columbia." The definition is expanded to include any commonwealth or territory of the United States. As before, these entities are included only "where appropriate." They are included for the reasons that counsel incor-

poration of state practice. For example, state holidays are recognized in computing time under Rule 6(a). Other, quite different, examples are Rules 64(a), invoking state law for prejudgment remedies, and 69(a)(1), relying on state law for the procedure on execution. Including commonwealths and territories in these and other rules avoids the gaps that otherwise would result when the federal rule relies on local practice rather than provide a uniform federal approach. Including them also establishes uniformity between federal courts and local courts in areas that may involve strong local interests, little need for uniformity among federal courts, or difficulty in defining a uniform federal practice that integrates effectively with local practice.

Adherence to a local practice may be refused as not “appropriate” when the local practice would impair a significant federal interest. [12/1/09]

### **Rule 82. Jurisdiction and Venue Unaffected.**

These rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts. An admiralty or maritime claim under Rule 9(h) is not a civil action for purposes of 28 U.S.C. §§ 1391-1392.

(Amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted February 28, 1966, effective July 1, 1966, and by order adopted April 23, 2001, effective December 1, 2001; amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 82 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

### **Rule 83. Rules by District Courts; Judge’s Directives.**

#### **(a) Local Rules.**

(1) *In General.* After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice. A local rule must be consistent with — but not duplicate — federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

(2) *Requirement of Form.* A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) *Procedure When There Is No Controlling Law.* A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and the district’s local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(Amended by order adopted April 29, 1985, effective August 1, 1985, by order adopted April 27, 1995, effective December 1, 1995; amended, effective December 1, 2007.)

### **COMMENT**

The language of Rule 83 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 84. Forms.**

The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

(Amended by order adopted December 27, 1946, effective March 19, 1948; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 84 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 85. Title.**

These rules may be cited as the Federal Rules of Civil Procedure.

(Amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 85 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

**Rule 86. Effective Dates.**

(a) *In General.* These rules and any amendments take effect at the time specified by the Supreme Court, subject to 28 U.S.C. § 2074. They govern:

- (1) proceedings in an action commenced after their effective date; and
- (2) proceedings after that date in an action then pending unless:

(A) the Supreme Court specifies otherwise; or

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b) *December 1, 2007 Amendments.* If any provision in Rules 1-5.1, 6-73, or 77-86 conflicts with another law, priority in time for the purpose of 28 U.S.C. § 2072(b) is not affected by the amendments taking effect on December 1, 2007.

(Added by order adopted December 27, 1946, effective March 19, 1948, amended by order adopted December 29, 1948, effective October 20, 1949, by order adopted April 17, 1961, effective July 19, 1961, by order adopted January 21, 1963 and March 18, 1963, effective July 1, 1963; amended, effective December 1, 2007.)

**COMMENT**

The language of Rule 86 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The subdivisions that provided an incomplete list of the effective dates of the original Civil Rules and amendments made up to 1963 are deleted as no longer useful.

Rule 86(b) is added to clarify the relationship of amendments taking effect on December 1, 2007, to other laws for the purpose of applying the “supersession” clause in 28 U.S.C. § 2072(b). Section 2072(b) provides that a law in conflict with an Enabling Act Rule “shall be of no further force or effect after such rule[] ha[s] taken effect.” The amendments that take effect on December 1, 2007, result from the general restyling of the Civil Rules and from a small number of technical revisions adopted on a parallel track. None of these amendments is intended to affect resolution of any conflict that might arise between a rule



and another law. Rule 86(b) makes this intent explicit. Any conflict that arises should be resolved by looking to the date the specific conflicting rule provision first became effective.

APPENDIX OF FORMS

FORM 1.

APPENDIX OF FORMS

Form 1. Caption. (Use on every summons, complaint, answer, motion, or other document.)

United States District Court  
for the  
District of

A B, Plaintiff	)	
	)	
v.	)	
	)	Civil Action No. _____
C D, Defendant	)	
	)	
v.	)	
	)	
E F, Third-Party Defendant	)	
(Use if needed.)	)	

(Name of Document)

(Use at the conclusion of pleadings and other papers that require a signature.)

(Signature of the attorney  
or unrepresented party)

(Printed name)

(Address)

(E-mail address)

(Telephone number)



FORM 3.

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Form 3. Summons.

(Caption – See Form 1.)

To name the defendant:

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, \_\_\_\_\_, whose address is \_\_\_\_\_. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date \_\_\_\_\_

\_\_\_\_\_  
Clerk of Court

(Court Seal)

*(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)*

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FORM 4.

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## Form 4. Summons on a Third-Party Complaint.

(Caption – See Form 1.)

To name the third-party defendant:

A lawsuit has been filed against defendant \_\_\_\_\_, who as third-party plaintiff is making this claim against you to pay part or all of what [he] may owe to the plaintiff \_\_\_\_\_.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff and on the defendant an answer to the attached third-party complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant's attorney, \_\_\_\_\_, whose address is, \_\_\_\_\_, and also on the plaintiff's attorney, \_\_\_\_\_, whose address is, \_\_\_\_\_. If you fail to do so, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

Date \_\_\_\_\_

\_\_\_\_\_  
Clerk of Court

(Court Seal)

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FORM 5.

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**Form 5. Notice of a Lawsuit and Request to Waive Service of a Summons.**

(Caption – See Form 1.)

To (name the defendant – or if the defendant is a corporation, partnership, or association name an officer or agent authorized to receive service):

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within (give at least 30 days or at least 60 days if the defendant is outside any judicial district of the United States) from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

**What happens next?**

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

(Date and sign – See Form 2.)

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**FORM 6.**

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**Form 6. Waiver of the Service of Summons.**

(Caption – See Form 1.)

To name the plaintiff's attorney or the unrepresented plaintiff:

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from \_\_\_\_\_, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

(Date and sign – See Form 2.)

(Attach the following to Form 6.)

**Duty to Avoid Unnecessary Expenses of Serving a Summons**

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

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FORM 7.

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**Form 7. Statement of Jurisdiction.**

- a. *(For diversity-of-citizenship jurisdiction.)* The plaintiff is [a citizen of Michigan] [a corporation incorporated under the laws of Michigan with its principal place of business in Michigan]. The defendant is [a citizen of New York] [a corporation incorporated under the laws of New York with its principal place of business in New York]. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.
- b. *(For federal-question jurisdiction.)* This action arises under [the United States Constitution, specify the article or amendment and the section] [a United States treaty specify] [a federal statute, \_\_\_ U.S.C. § \_\_\_].
- c. *(For a claim in the admiralty or maritime jurisdiction.)* This is a case of admiralty or maritime jurisdiction. *(To invoke admiralty status under Rule 9(h) use the following:* This is an admiralty or maritime claim within the meaning of Rule 9(h).*)*
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FORM 8.

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**Form 8. Statement of Reasons for Omitting a Party.**  
*(If a person who ought to be made a party under Rule 19(a) is not named, include this statement in accordance with Rule 19(c).)*

This complaint does not join as a party name who [is not subject to this court's personal jurisdiction]  
[cannot be made a party without depriving this court of subject-matter jurisdiction] because state the reason.





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FORM 10.

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**Form 10. Complaint to Recover a Sum Certain.**

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)

(Use one or more of the following as appropriate and include a demand for judgment.)

(a) *On a Promissory Note*

2. On date, the defendant executed and delivered a note promising to pay the plaintiff on date the sum of \$ \_\_\_\_\_ with interest at the rate of \_\_ percent. A copy of the note [is attached as Exhibit A] [is summarized as follows: \_\_\_\_\_].

3. The defendant has not paid the amount owed.

(b) *On an Account*

2. The defendant owes the plaintiff \$ \_\_\_\_\_ according to the account set out in Exhibit A.

(c) *For Goods Sold and Delivered*

2. The defendant owes the plaintiff \$ \_\_\_\_\_ for goods sold and delivered by the plaintiff to the defendant from date to date.

(d) *For Money Lent*

2. The defendant owes the plaintiff \$ \_\_\_\_\_ for money lent by the plaintiff to the defendant on date.

(e) *For Money Paid by Mistake*

2. The defendant owes the plaintiff \$ \_\_\_\_\_ for money paid by mistake to the defendant on date under these circumstances: describe with particularity in accordance with Rule 9(b).

(f) *For Money Had and Received*

2. The defendant owes the plaintiff \$ \_\_\_\_\_ for money that was received from name on date to be paid by the defendant to the plaintiff.

*Demand for Judgment*

Therefore, the plaintiff demands judgment against the defendant for \$ \_\_\_\_\_, plus interest and costs.

(Date and sign – See Form 2.)

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**FORM 11.**

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**Form 11. Complaint for Negligence.**

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)
2. On date, at place, the defendant negligently drove a motor vehicle against the plaintiff.
3. As a result, the plaintiff was physically injured, lost wages or income, suffered physical and mental pain, and incurred medical expenses of \$\_\_\_\_\_.

Therefore, the plaintiff demands judgment against the defendant for \$ \_\_\_\_\_, plus costs.

(Date and sign – See Form 2).

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**FORM 12.**

**Form 12. Complaint for Negligence When the Plaintiff Does Not Know Who Is Responsible.**

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)
2. On date, at place, defendant name or defendant name or both of them willfully or recklessly or negligently drove, or caused to be driven, a motor vehicle against the plaintiff.
3. As a result, the plaintiff was physically injured, lost wages or income, suffered mental and physical pain, and incurred medical expenses of \$           .

Therefore, the plaintiff demands judgment against one or both defendants for \$ \_\_\_\_\_, plus costs.

(Date and sign – See Form 2.)



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**FORM 15.**

**Form 15. Complaint for the Conversion of Property.**

(Caption — See Form 1.)

1. (Statement of Jurisdiction — See Form 7.)
2. On date, at place, the defendant converted to the defendant's own use property owned by the plaintiff. The property converted consists of describe.
3. The property is worth \$\_\_\_\_\_.

Therefore, the plaintiff demands judgment against the defendant for \$ \_\_\_\_\_, plus costs.

(Date and sign – See Form 2.)

### Form 16. Third-Party Complaint.

1. Plaintiff name has filed against defendant name a complaint, a copy of which is attached.
2. (State grounds entitling defendant's name to recover from third-party defendant's name for (all or an identified share) of any judgment for plaintiff's name against defendant's name.)

(Date and sign – See Form 2.)

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**FORM 17.**

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**Form 17. Complaint for Specific Performance of a Contract to Convey Land.**

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)
2. On date, the parties agreed to the contract [attached as Exhibit A][summarize the contract].
3. As agreed, the plaintiff tendered the purchase price and requested a conveyance of the land, but the defendant refused to accept the money or make a conveyance.
4. The plaintiff now offers to pay the purchase price.

Therefore, the plaintiff demands that:

- (a) the defendant be required to specifically perform the agreement and pay damages of \$ \_\_\_\_\_, plus interest and costs, or
- (b) if specific performance is not ordered, the defendant be required to pay damages of \$ \_\_\_\_\_, plus interest and costs.

(Date and sign – See Form 2.)

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FORM 18.

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## Form 18. Complaint for Patent Infringement.

(Caption – See Form 1.)

1. (Statement of Jurisdiction — See Form 7.)
2. On date, United States Letters Patent No. \_\_\_\_\_ were issued to the plaintiff for an invention in an electric motor. The plaintiff owned the patent throughout the period of the defendant's infringing acts and still owns the patent.
3. The defendant has infringed and is still infringing the Letters Patent by making, selling, and using electric motors that embody the patented invention, and the defendant will continue to do so unless enjoined by this court.
4. The plaintiff has complied with the statutory requirement of placing a notice of the Letters Patent on all electric motors it manufactures and sells and has given the defendant written notice of the infringement.

Therefore, the plaintiff demands:

- (a) a preliminary and final injunction against the continuing infringement;
- (b) an accounting for damages; and
- (c) interest and costs.

(Date and sign – See Form 2.)

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FORM 19.

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**Form 19. Complaint for Copyright Infringement and Unfair Competition.**

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)
2. Before date, the plaintiff, a United States citizen, wrote a book entitled \_\_\_\_\_.
3. The book is an original work that may be copyrighted under United States law. A copy of the book is attached as Exhibit A.
4. Between date and date, the plaintiff applied to the copyright office and received a certificate of registration dated \_\_\_\_\_ and identified as date, class, number.
5. Since date, the plaintiff has either published or licensed for publication all copies of the book in compliance with the copyright laws and has remained the sole owner of the copyright.
6. After the copyright was issued, the defendant infringed the copyright by publishing and selling a book entitled \_\_\_\_\_, which was copied largely from the plaintiff's book. A copy of the defendant's book is attached as Exhibit B.
7. The plaintiff has notified the defendant in writing of the infringement.
8. The defendant continues to infringe the copyright by continuing to publish and sell the infringing book in violation of the copyright, and further has engaged in unfair trade practices and unfair competition in connection with its publication and sale of the infringing book, thus causing irreparable damage.

Therefore, the plaintiff demands that:

- (a) until this case is decided the defendant and the defendant's agents be enjoined from disposing of any copies of the defendant's book by sale or otherwise;
- (b) the defendant account for and pay as damages to the plaintiff all profits and advantages gained from unfair trade practices and unfair competition in selling the defendant's book, and all profits and advantages gained from infringing the plaintiff's copyright (but no less than the statutory minimum);
- (c) the defendant deliver for impoundment all copies of the book in the defendant's possession or control and deliver for destruction all infringing copies and all plates, molds, and other materials for making infringing copies;
- (d) the defendant pay the plaintiff interest, costs, and reasonable attorney's fees; and
- (e) the plaintiff be awarded any other just relief.

(Date and sign – See Form 2.)

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FORM 20.

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**Form 20. Complaint for Interpleader and Declaratory Relief.**

(Caption – See Form 1.)

1. (Statement of Jurisdiction – See Form 7.)
2. On date, the plaintiff issued a life insurance policy on the life of name with name as the named beneficiary.
3. As a condition for keeping the policy in force, the policy required payment of a premium during the first year and then annually.
4. The premium due on date was never paid, and the policy lapsed after that date.
5. On date, after the policy had lapsed, both the insured and the named beneficiary died in an automobile collision.
6. Defendant name claims to be the beneficiary in place of name and has filed a claim to be paid the policy's full amount.
7. The other two defendants are representatives of the deceased persons' estates. Each defendant has filed a claim on behalf of each estate to receive payment of the policy's full amount.
8. If the policy was in force at the time of death, the plaintiff is in doubt about who should be paid.

Therefore, the plaintiff demands that:

- (a) each defendant be restrained from commencing any action against the plaintiff on the policy;
- (b) a judgment be entered that no defendant is entitled to the proceeds of the policy or any part of it, but if the court determines that the policy was in effect at the time of the insured's death, that the defendants be required to interplead and settle among themselves their rights to the proceeds, and that the plaintiff be discharged from all liability except to the defendant determined to be entitled to the proceeds; and
- (c) the plaintiff recover its costs.

(Date and sign – See Form 2.)

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FORM 21.

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**Form 21. Complaint on a Claim for a Debt and to Set Aside a Fraudulent Conveyance Under Rule 18(b).**

(Caption – See Form 1.)

1. (Statement of Jurisdiction — See Form 7.)
2. On date, defendant name signed a note promising to pay to the plaintiff on date the sum of \$ \_\_\_\_\_ with interest at the rate of \_\_\_\_ percent. [The pleader may, but need not, attach a copy or plead the note verbatim.]
3. Defendant name owes the plaintiff the amount of the note and interest.
4. On date, defendant name conveyed all defendant's real and personal property if less than all, describe it fully to defendant name for the purpose of defrauding the plaintiff and hindering or delaying the collection of the debt.

Therefore, the plaintiff demands that:

- (a) judgment for \$ \_\_\_\_\_, plus costs, be entered against defendant(s) name(s); and
- (b) the conveyance to defendant name be declared void and any judgment granted be made a lien on the property.

(Date and sign – See Form 2.)

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**FORM 30.**

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**Form 30. Answer Presenting Defenses Under Rule 12(b).**

(Caption – See Form 1.)

**Responding to Allegations in the Complaint**

1. Defendant admits the allegations in paragraphs \_\_\_\_\_.
2. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraphs \_\_\_\_\_.
3. Defendant admits *identify part of the allegation* in paragraph \_\_\_\_\_ and denies or lacks knowledge or information sufficient to form a belief about the truth of the rest of the paragraph.

**Failure to State a Claim**

4. The complaint fails to state a claim upon which relief can be granted.

**Failure to Join a Required Party**

5. If there is a debt, it is owed jointly by the defendant and name who is a citizen of \_\_\_\_\_. This person can be made a party without depriving this court of jurisdiction over the existing parties.

**Affirmative Defense – Statute of Limitations**

6. The plaintiff's claim is barred by the statute of limitations because it arose more than \_\_\_\_\_ years before this action was commenced.

**Counterclaim**

7. *(Set forth any counterclaim in the same way a claim is pleaded in a complaint. Include a further statement of jurisdiction if needed.)*

**Crossclaim**

8. *(Set forth a crossclaim against a coparty in the same way a claim is pleaded in a complaint. Include a further statement of jurisdiction if needed.)*

(Date and sign — See Form 2.)  
  

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**FORM 31.**

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**Form 31. Answer to a Complaint for Money Had and Received with a Counterclaim for Interpleader.**

(Caption – See Form 1.)

**Response to the Allegations in the Complaint**  
(See Form 30.)**Counterclaim for Interpleader**

1. The defendant received from name a deposit of \$ \_\_\_\_\_.
2. The plaintiff demands payment of the deposit because of a purported assignment from name, who has notified the defendant that the assignment is not valid and who continues to hold the defendant responsible for the deposit.

Therefore, the defendant demands that:

- (a) name be made a party to this action;
- (b) the plaintiff and name be required to interplead their respective claims;
- (c) the court decide whether the plaintiff or name or either of them is entitled to the deposit and discharge the defendant of any liability except to the person entitled to the deposit; and
- (d) the defendant recover costs and attorney's fees.

(Date and sign – See Form 2.)  
  

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**FORM 40.**

**Form 40. Motion to Dismiss Under Rule 12(b) for Lack of Jurisdiction, Improper Venue, Insufficient Service of Process, or Failure to State a Claim.**

(Caption – See Form 1.)

The defendant moves to dismiss the action because:

1. the amount in controversy is less than the sum or value specified by 28 U.S.C. § 1332;
2. the defendant is not subject to the personal jurisdiction of this court;
3. venue is improper (this defendant does not reside in this district and no part of the events or omissions giving rise to the claim occurred in the district);
4. the defendant has not been properly served, as shown by the attached affidavits of \_\_\_\_\_; or
5. the complaint fails to state a claim upon which relief can be granted.

(Date and sign – See Form 2.)

**FORM 41.**

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**Form 41. Motion to Bring in a Third-Party Defendant.**

(Caption – See Form 1.)

The defendant, as third-party plaintiff, moves for leave to serve on name a summons and third-party complaint, copies of which are attached.

(Date and sign – See Form 2.)

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**FORM 42.**

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**Form 42. Motion to Intervene as a Defendant Under Rule 24.**

(Caption – See Form 1.)

1. name moves for leave to intervene as a defendant in this action and to file the attached answer.

(State grounds under Rule 24(a) or (b).)

2. The plaintiff alleges patent infringement. We manufacture and sell to the defendant the articles involved, and we have a defense to the plaintiff's claim.
3. Our defense presents questions of law and fact that are common to this action.

(Date and sign – See Form 2.)

[An Intervener's Answer must be attached. See Form 30.]

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FORM 50.

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**Form 50. Request to Produce Documents and Tangible Things, or to Enter onto Land Under Rule 34.**

(Caption – See Form 1.)

The plaintiff name requests that the defendant name respond within \_\_\_\_ days to the following requests:

1. To produce and permit the plaintiff to inspect and copy and to test or sample the following documents, including electronically stored information:

*(Describe each document and the electronically stored information, either individually or by category.)*

*(State the time, place, and manner of the inspection and any related acts.)*

2. To produce and permit the plaintiff to inspect and copy — and to test or sample — the following tangible things:

*(Describe each thing, either individually or by category.)*

*(State the time, place, and manner of the inspection and any related acts.)*

3. To permit the plaintiff to enter onto the following land to inspect, photograph, test, or sample the property or an object or operation on the property.

*(Describe the property and each object or operation.)*

*(State the time and manner of the inspection and any related acts.)*

(Date and sign – See Form 2.)

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**FORM 51.**

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**Form 51. Request for Admissions Under Rule 36.**

(Caption — See Form 1.)

The plaintiff name asks the defendant name to respond within 30 days to these requests by admitting, for purposes of this action only and subject to objections to admissibility at trial:

1. The genuineness of the following documents, copies of which [are attached] [are or have been furnished or made available for inspection and copying].

(List each document.)

2. The truth of each of the following statements:

(List each statement.)

(Date and sign — See Form 2.)

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**FORM 52. Report of the Parties' Planning Meeting.**

(Caption — See Form 1.)

1. The following persons participated in a Rule 26(f) conference on date by state the method of conferring :
2. Initial Disclosures. The parties [have completed] [will complete by date] the initial disclosures required by Rule 26(a)(1).
3. Discovery Plan. The parties propose this discovery plan:

*(Use separate paragraphs or subparagraphs if the parties disagree.)*

- (a) Discovery will be needed on these subjects: *(describe)*
  - (b) Disclosure or discovery of electronically stored information should be handled as follows: *(briefly describe the parties' proposals, including the form or forms for production.)*
  - (c) The parties have agreed to an order regarding claims of privilege or of protection as trial-preparation material asserted after production, as follows: *(briefly describe the provisions of the proposed order.)*
  - (d) (Dates for commencing and completing discovery, including discovery to be commenced or completed before other discovery.)
  - (e) (Maximum number of interrogatories by each party to another party, along with dates the answers are due.)
  - (f) (Maximum number of requests for admission, along with the dates responses are due.)
  - (g) (Maximum number of depositions for each party.)
  - (h) (Limits on the length of depositions, in hours.)
  - (i) (Dates for exchanging reports of expert witnesses.)
  - (j) (Dates for supplementations under Rule 26(e).)
4. Other Items:
- (a) (A date if the parties ask to meet with the court before a scheduling order.)
  - (b) (Requested dates for pretrial conferences.)
  - (c) (Final dates for the plaintiff to amend pleadings or to join parties.)
  - (d) (Final dates for the defendant to amend pleadings or to join parties.)
  - (e) (Final dates to file dispositive motions.)
  - (f) (State the prospects for settlement.)
  - (g) (Identify any alternative dispute resolution procedure that may enhance settlement prospects.)
  - (h) (Final dates for submitting Rule 26(a)(3) witness lists, designations of witnesses whose testimony will be presented by deposition, and exhibit lists.)
  - (i) (Final dates to file objection under Rule 26(a)(3).)
  - (j) (Suggested trial date and estimate of trial length.)
  - (k) (Other matters.)

(Date and sign — see Form 2.)

(As amended April 28, 2010, effective December 1, 2010.)



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FORM 60.

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## Form 60. Notice of Condemnation.

(Caption – See Form 1.)

To name the defendant.

1. A complaint in condemnation has been filed in the United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_, to take property to use for purpose. The interest to be taken is describe. The court is located in the United States courthouse at this address: \_\_\_\_\_.
2. The property to be taken is described below. You have or claim an interest in it.  
  
(Describe the property.)
3. The authority for taking this property is cite.
4. If you want to object or present any defense to the taking you must serve an answer on the plaintiff's attorney within 21 days [after being served with this notice][from (insert the date of the last publication of notice)]. Send your answer to this address: \_\_\_\_\_.
5. Your answer must identify the property in which you claim an interest, state the nature and extent of that interest, and state all your objections and defenses to the taking. Objections and defenses not presented are waived.
6. If you fail to answer you consent to the taking and the court will enter a judgment that takes your described property interest.
7. Instead of answering, you may serve on the plaintiff's attorney a notice of appearance that designates the property in which you claim an interest. After you do that, you will receive a notice of any proceedings that affect you. Whether or not you have previously appeared or answered, you may present evidence at a trial to determine compensation for the property and share in the overall award.

(Date and sign – See Form 2.)

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**FORM 61.**

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**Form 61. Complaint for Condemnation.**

(Caption – See Form 1; name as defendants the property and at least one owner.)

1. (Statement of Jurisdiction – See Form 7.)
2. This is an action to take property under the power of eminent domain and to determine just compensation to be paid to the owners and parties in interest.
3. The authority for the taking is \_\_\_\_\_.
4. The property is to be used for \_\_\_\_\_.
5. The property to be taken is *(describe in enough detail for identification — or attach the description and state “is described in Exhibit A, attached.”)*
6. The interest to be acquired is \_\_\_\_\_.
7. The persons known to the plaintiff to have or claim an interest in the property are: \_\_\_\_\_ *(For each person include the interest claimed.)*
8. There may be other persons who have or claim an interest in the property and whose names could not be found after a reasonably diligent search. They are made parties under the designation “Unknown Owners.”

Therefore, the plaintiff demands judgment:

- (a) condemning the property;
- (b) determining and awarding just compensation; and
- (c) granting any other lawful and proper relief.

(Date and sign – See Form 2.)

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**FORM 70.**

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**Form 70. Judgment on a Jury Verdict.**

(Caption – See Form 1.)

This action was tried by a jury with Judge \_\_\_\_\_ presiding, and the jury has rendered a verdict.

It is ordered that:

[the plaintiff name recover from the defendant name the amount of \$\_\_\_\_\_ with interest at the rate of \_\_%, along with costs.]

[the plaintiff recover nothing, the action be dismissed on the merits, and the defendant name recover costs from the plaintiff name.]

Date \_\_\_\_\_

\_\_\_\_\_  
Clerk of Court



**FORM 71.**

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**Form 71. Judgment by the Court without a Jury.**

(Caption – See Form 1.)

This action was tried by Judge \_\_\_\_\_ without a jury and the following decision was reached:

It is ordered that [the plaintiff name recover from the defendant, name the amount of \$\_\_\_\_\_, with prejudgment interest at the rate of \_\_%, postjudgment interest at the rate of \_\_%, along with costs.] [the plaintiff recover nothing, the action be dismissed on the merits, and the defendant name recover costs from the plaintiff name.]

Date \_\_\_\_\_

\_\_\_\_\_  
Clerk of Court

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**FORM 80.**

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**Form 80. Notice of a Magistrate Judge's Availability.**

1. A magistrate judge is available under title 28 U.S.C. § 636(c) to conduct the proceedings in this case, including a jury or nonjury trial and the entry of final judgment. But a magistrate judge can be assigned only if all parties voluntarily consent.
2. You may withhold your consent without adverse substantive consequences. The identity of any party consenting or withholding consent will not be disclosed to the judge to whom the case is assigned or to any magistrate judge.
3. If a magistrate judge does hear your case, you may appeal directly to a United States court of appeals as you would if a district judge heard it.

A form called *Consent to an Assignment to a United States Magistrate Judge* is available from the court clerk's office.

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**FORM 81.**

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**Form 81. Consent to an Assignment to a Magistrate Judge.**

(Caption – See Form 1.)

I voluntarily consent to have a United States magistrate judge conduct all further proceedings in this case, including a trial, and order the entry of final judgment. (Return this form to the court clerk — not to a judge or magistrate judge.)

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of the Party

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**FORM 82.**

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**Form 82. Order of Assignment to a Magistrate Judge.**

(Caption – See Form 1.)

With the parties' consent it is ordered that this case be assigned to United States Magistrate Judge \_\_\_\_\_ of this district to conduct all proceedings and enter final judgment in accordance with 28 U.S.C. § 636(c).

Date \_\_\_\_\_

\_\_\_\_\_  
United States District Judge

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# **SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS**

## **Rule A. Scope of Rules.**

- (1) These Supplemental Rules apply to:
- (A) the procedure in admiralty and maritime claims within the meaning of Rule 9(h) with respect to the following remedies:
    - (i) maritime attachment and garnishment,
    - (ii) actions in rem,
    - (iii) possessory, petitory, and partition actions, and
    - (iv) actions for exoneration from or limitation of liability;
  - (B) forfeiture actions in rem arising from a federal statute; and
  - (C) the procedure in statutory condemnation proceedings analogous to maritime actions in rem, whether within the admiralty and maritime jurisdiction or not. Except as otherwise provided, references in these Supplemental Rules to actions in rem include such analogous statutory condemnation proceedings.
- (2) The Federal Rules of Civil Procedure also apply to the foregoing proceedings except to the extent that they are inconsistent with these Supplemental Rules.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted April 12, 2006, effective December 1, 2006.)

## **Rule B. In Personam Actions: Attachment and Garnishment.**

(1) *When Available; Complaint, Affidavit, Judicial Authorization, and Process.* In an in personam action:

(a) If a defendant is not found within the district when a verified complaint praying for attachment and the affidavit required by Rule B(1)(b) are filed, a verified complaint may contain a prayer for process to attach the defendant's tangible or intangible personal property — up to the amount sued for — in the hands of garnishees named in the process.

(b) The plaintiff or the plaintiff's attorney must sign and file with the complaint an affidavit stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the district. The court must review the complaint and affidavit and, if the conditions of this Rule B appear to exist, enter an order so stating and authorizing process of attachment and garnishment. The clerk may issue supplemental process enforcing the court's order upon application without further court order.

(c) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must issue the summons and process of attachment and garnishment. The plaintiff has the burden in any post-attachment hearing under Rule E(4)(f) to show that exigent circumstances existed.

(d)(i) If the property is a vessel or tangible property on board a vessel, the summons, process, and any supplemental process must be delivered to the marshal for service.

(ii) If the property is other tangible or intangible property, the summons, process, and any supplemental process must be delivered to a person or organization authorized to serve it, who may be (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(e) The plaintiff may invoke state-law remedies under Rule 64 for seizure of person or property for the purpose of securing satisfaction of the judgment.

(2) *Notice to Defendant.* No default judgment may be entered except upon proof — which may be by affidavit — that:

(a) the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by Rule 4;

(b) the plaintiff or the garnishee has mailed to the defendant the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt; or

(c) the plaintiff or the garnishee has tried diligently to give notice of the action to the defendant but could not do so.

(3) *Answer.*

(a) *By Garnishee.* The garnishee shall serve an answer, together with answers to any interrogatories served with the complaint, within 21 days after service of process upon the garnishee. Interrogatories to the garnishee may be served with the complaint without leave of court. If the garnishee refuses or neglects to answer on oath as to the debts, credits, or effects of the defendant in the garnishee's hands, or any interrogatories concerning such debts, credits, and effects that may be propounded by the plaintiff, the court may award compulsory process against the garnishee. If the garnishee admits any debts, credits, or effects, they shall be held in the garnishee's hands or paid into the registry of the court, and shall be held in either case subject to the further order of the court.

(b) *By Defendant.* The defendant shall serve an answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 2, 1987, effective August 1, 1987, amended by order April 17, 2000, effective December 1, 2000; by order April 25, 2005, effective December 1, 2005; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The time set in the former rule at 20 days has been revised to 21 days. See the Note to Rule 6. [12/1/09]

### Rule C. In Rem Actions: Special Provisions.

(1) *When Available.* An action in rem may be brought:

(a) To enforce any maritime lien;

(b) Whenever a statute of the United States provides for a maritime action in rem or a proceeding analogous thereto.

Except as otherwise provided by law a party who may proceed in rem may also, or in the alternative, proceed in personam against any person who may be liable.

Statutory provisions exempting vessels or other property owned or possessed by or operated by or for the United States from arrest or seizure are not affected by this rule. When a statute so provides, an action against the United States or an instrumentality thereof may proceed on in rem principles.

(2) *Complaint.* In an action in rem the complaint must:

(a) be verified;

(b) describe with reasonable particularity the property that is the subject of the action; and

(c) state that the property is within the district or will be within the district while the action is pending.

(3) *Judicial Authorization and Process.*

(a) *Arrest Warrant.*

(i) The court must review the complaint and any supporting papers. If the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.



(ii) If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make court review impracticable, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property that is the subject of the action. The plaintiff has the burden in any post-arrest hearing under Rule E(4)(f) to show that exigent circumstances existed.

(b) *Service.*

(i) If the property that is the subject of the action is a vessel or tangible property on board a vessel, the warrant and any supplemental process must be delivered to the marshal for service.

(ii) If the property that is the subject of the action is other property, tangible or intangible, the warrant and any supplemental process must be delivered to a person or organization authorized to enforce it, who may be: (A) a marshal; (B) someone under contract with the United States; (C) someone specially appointed by the court for that purpose; or, (D) in an action brought by the United States, any officer or employee of the United States.

(c) *Deposit in Court.* If the property that is the subject of the action consists in whole or in part of freight, the proceeds of property sold, or other intangible property, the clerk must issue — in addition to the warrant — a summons directing any person controlling the property to show cause why it should not be deposited in court to abide the judgment.

(d) *Supplemental Process.* The clerk may upon application issue supplemental process to enforce the court's order without further court order.

(4) *Notice.* No notice other than execution of process is required when the property that is the subject of the action has been released under Rule E(5). If the property is not released within 14 days after execution, the plaintiff must promptly — or within the time that the court allows — give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district, but publication may be terminated if the property is released before publication is completed. The notice must specify the time under Rule C(6) to file a statement of interest in or right against the seized property and to answer. This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under 46 U.S.C. §§ 31301 et seq., as amended.

(5) *Ancillary Process.* In any action in rem in which process has been served as provided by this rule, if any part of the property that is the subject of the action has not been brought within the control of the court because it has been removed or sold, or because it is intangible property in the hands of a person who has not been served with process, the court may, on motion, order any person having possession or control of such property or its proceeds to show cause why it should not be delivered into the custody of the marshal or other person or organization having a warrant for the arrest of the property, or paid into court to abide the judgment; and, after hearing, the court may enter such judgment as law and justice may require.

(6) *Responsive Pleading; Interrogatories.*

(a) *Statement of Interest; Answer.* In an action in rem:

(i) a person who asserts a right of possession or any ownership interest in the property that is the subject of the action must file a verified statement of right or interest:

- (A) within 14 days after the execution of process, or
- (B) within the time that the court allows;

(ii) the statement of right or interest must describe the interest in the property that supports the person's demand for its restitution or right to defend the action;

(iii) an agent, bailee, or attorney must state the authority to file a statement of right or interest on behalf of another; and

(iv) a person who asserts a right of possession or any ownership interest must serve an answer within 21 days after filing the statement of interest or right.

(b) *Interrogatories.* Interrogatories may be served with the complaint in an in rem action without leave of court. Answers to the interrogatories must be served with the answer to the complaint.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 29, 2002, effective December 1, 2002, by order April 25, 2005, effective December 1, 2005, by order adopted April 12, 2006, effective December 1, 2006, by order effective December 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The time set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Note to Rule 6. [12/1/09]

#### **Rule D. Possessory, Petitory and Partition Actions.**

In all actions for possession, partition, and to try title maintainable according to the course of the admiralty practice with respect to a vessel, in all actions so maintainable with respect to the possession of cargo or other maritime property, and in all actions by one or more part owners against the others to obtain security for the return of the vessel from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the vessel for any voyage on giving security for its safe return, the process shall be by a warrant of arrest of the vessel, cargo, or other property, and by notice in the manner provided by Rule B(2) to the adverse party or parties.

(Added by order adopted February 28, 1966, effective July 1, 1966.)

#### **Rule E. Actions in Rem and Quasi in Rem: General Provisions.**

(1) *Applicability.* Except as otherwise provided, this rule applies to actions in personam with process of maritime attachment and garnishment, actions in rem, and petitory, possessory, and partition actions, supplementing Rules B, C, and D.

(2) *Complaint; Security.*

(a) *Complaint.* In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

(b) *Security for Costs.* Subject to the provisions of Rule 54(d) and of relevant statutes, the court may, on the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, require the plaintiff, defendant, claimant, or other party to give security, or additional security, in such sum as the court shall direct to pay all costs and expenses that shall be awarded against the party by any interlocutory order or by the final judgment, or on appeal by any appellate court.

(3) *Process.*

(a) In admiralty and maritime proceedings process in rem or of maritime attachment and garnishment may be served only within the district.

(b) *Issuance and Delivery.* Issuance and delivery of process in rem, or of maritime attachment and garnishment, shall be held in abeyance if the plaintiff so requests.

(4) *Execution of Process; Marshal's Return; Custody of Property; Procedures for Release.*

(a) *In General.* Upon issuance and delivery of the process, or, in the case of summons with process of attachment and garnishment, when it appears that the defendant cannot be found within the district, the marshal or other person or organization having a warrant shall forthwith execute the process in accordance with this subdivision (4), making due and prompt return.

(b) *Tangible Property.* If tangible property is to be attached or arrested, the marshal or other person or organization having the warrant shall take it into the marshal's possession for safe custody. If the character or situation of the property is such that the taking



of actual possession is impracticable, the marshal or other person executing the process shall affix a copy thereof to the property in a conspicuous place and leave a copy of the complaint and process with the person having possession or the person's agent. In furtherance of the marshal's custody of any vessel the marshal is authorized to make a written request to the collector of customs not to grant clearance to such vessel until notified by the marshal or a deputy marshal or by the clerk that the vessel has been released in accordance with these rules.

(c) *Intangible Property.* If intangible property is to be attached or arrested the marshal or other person or organization having the warrant shall execute the process by leaving with the garnishee or other obligor a copy of the complaint and process requiring the garnishee or other obligor to answer as provided in Rules B(3)(a) and C(6); or the marshal may accept for payment into the registry of the court the amount owed to the extent of the amount claimed by the plaintiff with interest and costs, in which event the garnishee or other obligor shall not be required to answer unless alias process shall be served.

(d) *Directions with Respect to Property in Custody.* The marshal or other person or organization having the warrant may at any time apply to the court for directions with respect to property that has been attached or arrested, and shall give notice of such application to any or all of the parties as the court may direct.

(e) *Expenses of Seizing and Keeping Property; Deposit.* These rules do not alter the provisions of 28 U.S.C. § 1921, as amended, relative to the expenses of seizing and keeping property attached or arrested and to the requirement of deposits to cover such expenses.

(f) *Procedure for Release From Arrest or Attachment.* Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules. This subdivision shall have no application to suits for seamen's wages when process is issued upon a certification of sufficient cause filed pursuant to Title 46, U.S.C. §§ 603 and 604<sup>1</sup> or to actions by the United States for forfeitures for violation of any statute of the United States.

(5) *Release of Property.*

(a) *Special Bond.* Whenever process of maritime attachment and garnishment or process in rem is issued the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by stipulation of the parties, conditioned to answer the judgment of the court or of any appellate court. The parties may stipulate the amount and nature of such security. In the event of the inability or refusal of the parties so to stipulate the court shall fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with accrued interest and costs; but the principal sum shall in no event exceed (i) twice the amount of the plaintiff's claim or (ii) the value of the property on due appraisal, whichever is smaller. The bond or stipulation shall be conditioned for the payment of the principal sum and interest thereon at 6 per cent per annum.

(b) *General Bond.* The owner of any vessel may file a general bond or stipulation, with sufficient surety, to be approved by the court, conditioned to answer the judgment of such court in all or any actions that may be brought thereafter in such court in which the vessel is attached or arrested. Thereupon the execution of all such process against such vessel shall be stayed so long as the amount secured by such bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which such vessel has been attached or arrested. Judgments and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such actions. The district court may make necessary orders to carry this rule into effect, particularly as to the giving of proper notice of any action against or attachment of a vessel for which a general bond has been filed. Such bond or stipulation shall be indorsed by the clerk with a minute of the actions wherein process is so stayed. Further security may be required by the court at any time.

<sup>1</sup> Repealed by Pub. L. 98-89, § 4(b), Aug. 26, 1983, 97 Stat. 600, section 1 of which enacted Title 46, Shipping.



If a special bond or stipulation is given in a particular case, the liability on the general bond or stipulation shall cease as to that case.

(c) *Release by Consent or Stipulation; Order of Court or Clerk; Costs.* Any vessel, cargo, or other property in the custody of the marshal or other person or organization having the warrant may be released forthwith upon the marshal's acceptance and approval of a stipulation, bond, or other security, signed by the party on whose behalf the property is detained or the party's attorney and expressly authorizing such release, if all costs and charges of the court and its officers shall have first been paid. Otherwise no property in the custody of the marshal, other person or organization having the warrant, or other officer of the court shall be released without an order of the court; but such order may be entered as of course by the clerk, upon the giving of approved security as provided by law and these rules, or upon the dismissal or discontinuance of the action; but the marshal or other person or organization having the warrant shall not deliver any property so released until the costs and charges of the officers of the court shall first have been paid.

(d) *Possessory, Petitory, and Partition Actions.* The foregoing provisions of this subdivision (5) do not apply to petitory, possessory, and partition actions. In such cases the property arrested shall be released only by order of the court, on such terms and conditions and on the giving of such security as the court may require.

(6) *Reduction or Impairment of Security.* Whenever security is taken the court may, on motion and hearing, for good cause shown, reduce the amount of security given; and if the surety shall be or become insufficient, new or additional sureties may be required on motion and hearing.

(7) *Security on Counterclaim.*

(a) When a person who has given security for damages in the original action asserts a counterclaim that arises from the transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court, for cause shown, directs otherwise. Proceedings on the original claim must be stayed until this security is given, unless the court directs otherwise.

(b) The plaintiff is required to give security under Rule E(7)(a) when the United States or its corporate instrumentality counterclaims and would have been required to give security to respond in damages if a private party but is relieved by law from giving security.

(8) *Restricted Appearance.* An appearance to defend against an admiralty and maritime claim with respect to which there has issued process in rem, or process of attachment and garnishment, may be expressly restricted to the defense of such claim, and in that event is not an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.

(9) *Disposition of Property; Sales.*

(a) *Interlocutory Sales; Delivery.*

(i) On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold — with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court — if:

(A) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or disproportionate; or

(C) there is an unreasonable delay in securing release of the property.

(ii) In the circumstances described in Rule E(9)(a)(i), the court, on motion by a defendant or a person filing a statement of interest or right under Rule C(6), may order that the property, rather than being sold, be delivered to the movant upon giving security under these rules.

(b) *Sales, Proceeds.* All sales of property shall be made by the marshal or a deputy marshal, or by other person or organization having the warrant, or by any other person assigned by the court where the marshal or other person or organization having the

warrant is a party in interest; and the proceeds of sale shall be forthwith paid into the registry of the court to be disposed of according to law.

(10) *Preservation of Property.* When the owner or another person remains in possession of property attached or arrested under the provisions of Rule E(4)(b) that permit execution of process without taking actual possession, the court, on a party's motion or on its own, may enter any order necessary to preserve the property and to prevent its removal.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 2, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 12, 2006, effective December 1, 2006.)

### **Rule F. Limitation of Liability.**

(1) *Time for Filing Complaint; Security.* Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner's option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner's interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 percent per annum from the date of the security.

(2) *Complaint.* The complaint shall set forth the facts on the basis of which the right to limit liability is asserted and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage if any, on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer the plaintiff's interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

(3) *Claims Against Owner; Injunction.* Upon compliance by the owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner or the owner's property with respect to the matter in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action.

(4) *Notice to Claimants.* Upon the owner's compliance with subdivision (1) of this rule the court shall issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be



filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

(5) *Claims and Answer.* Claims shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued. If a claimant desires to contest either the right to exoneration from or the right to limitation of liability the claimant shall file and serve an answer to the complaint unless the claim has included an answer.

(6) *Information to Be Given Claimants.* Within 30 days after the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each claimant (or if the claimant has no attorney to the claimant) a list setting forth (a) the name of each claimant, (b) the name and address of the claimant's attorney (if the claimant is known to have one), (c) the nature of the claim, i.e., whether property loss, property damage, death, personal injury etc., and (d) the amount thereof.

(7) *Insufficiency of Fund or Security.* Any claimant may by motion demand that the funds deposited in court or the security given by the plaintiff be increased on the ground that they are less than the value of the plaintiff's interest in the vessel and pending freight. Thereupon the court shall cause due appraisalment to be made of the value of the plaintiff's interest in the vessel and pending freight; and if the court finds that the deposit or security is either insufficient or excessive it shall order its increase or reduction. In like manner any claimant may demand that the deposit or security be increased on the ground that it is insufficient to carry out the provisions of the statutes relating to claims in respect of loss of life or bodily injury; and, after notice and hearing, the court may similarly order that the deposit or security be increased or reduced.

(8) *Objections to Claims: Distribution of Fund.* Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

(9) *Venue; Transfer.* The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district. For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules.

(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted March 2, 1987, effective August 1, 1987.)

### **Rule G. Forfeiture Actions In Rem.**

(1) *Scope.* This rule governs a forfeiture action in rem arising from a federal statute. To the extent that this rule does not address an issue, Supplemental Rules C and E and the Federal Rules of Civil Procedure also apply.



(2) *Complaint.* The complaint must:

- (a) be verified;
- (b) state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;
- (c) describe the property with reasonable particularity;
- (d) if the property is tangible, state its location when any seizure occurred and — if different — its location when the action is filed;
- (e) identify the statute under which the forfeiture action is brought; and
- (f) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.

(3) *Judicial Authorization and Process.*

(a) *Real Property.* If the defendant is real property, the government must proceed under 18 U.S.C. § 985.

(b) *Other Property; Arrest Warrant.* If the defendant is not real property:

- (i) the clerk must issue a warrant to arrest the property if it is in the government's possession, custody, or control;
- (ii) the court — on finding probable cause — must issue a warrant to arrest the property if it is not in the government's possession, custody, or control and is not subject to a judicial restraining order; and
- (iii) a warrant is not necessary if the property is subject to a judicial restraining order.

(c) *Execution of Process.*

(i) The warrant and any supplemental process must be delivered to a person or organization authorized to execute it, who may be: (A) a marshal or any other United States officer or employee; (B) someone under contract with the United States; or (C) someone specially appointed by the court for that purpose.

(ii) The authorized person or organization must execute the warrant and any supplemental process on property in the United States as soon as practicable unless:

(A) the property is in the government's possession, custody, or control; or

(B) the court orders a different time when the complaint is under seal, the action is stayed before the warrant and supplemental process are executed, or the court finds other good cause.

(iii) The warrant and any supplemental process may be executed within the district or, when authorized by statute, outside the district.

(iv) If executing a warrant on property outside the United States is required, the warrant may be transmitted to an appropriate authority for serving process where the property is located.

(4) *Notice.*

(a) *Notice by Publication.*

(i) *When Publication is Required.* A judgment of forfeiture may be entered only if the government has published notice of the action within a reasonable time after filing the complaint or at a time the court orders. But notice need not be published if:

(A) the defendant property is worth less than \$1,000 and direct notice is sent under Rule G(4)(b) to every person the government can reasonably identify as a potential claimant; or

(B) the court finds that the cost of publication exceeds the property's value and that other means of notice would satisfy due process.

(ii) *Content of the Notice.* Unless the court orders otherwise, the notice must:

(A) describe the property with reasonable particularity;

(B) state the times under Rule G(5) to file a claim and to answer; and

(C) name the government attorney to be served with the claim and answer.

(iii) *Frequency of Publication.* Published notice must appear:

(A) once a week for three consecutive weeks; or

(B) only once if, before the action was filed, notice of nonjudicial forfeiture of the same property was published on an official internet government forfeiture site for at least 30 consecutive days, or in a newspaper of general circulation for three

consecutive weeks in a district where publication is authorized under Rule G(4)(a)(iv).

(iv) *Means of Publication.* The government should select from the following options a means of publication reasonably calculated to notify potential claimants of the action:

(A) if the property is in the United States, publication in a newspaper generally circulated in the district where the action is filed, where the property was seized, or where property that was not seized is located;

(B) if the property is outside the United States, publication in a newspaper generally circulated in a district where the action is filed, in a newspaper generally circulated in the country where the property is located, or in legal notices published and generally circulated in the country where the property is located; or

(C) instead of (A) or (B), posting a notice on an official internet government forfeiture site for at least 30 consecutive days.

(b) *Notice to Known Potential Claimants.*

(i) *Direct Notice Required.* The government must send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant on the facts known to the government before the end of the time for filing a claim under Rule G(5)(a)(ii)(B).

(ii) *Content of the Notice.* The notice must state:

(A) the date when the notice is sent;

(B) a deadline for filing a claim, at least 35 days after the notice is sent;

(C) that an answer or a motion under Rule 12 must be filed no later than 21 days after filing the claim; and

(D) the name of the government attorney to be served with the claim and answer.

(iii) *Sending Notice.*

(A) The notice must be sent by means reasonably calculated to reach the potential claimant.

(B) Notice may be sent to the potential claimant or to the attorney representing the potential claimant with respect to the seizure of the property or in a related investigation, administrative forfeiture proceeding, or criminal case.

(C) Notice sent to a potential claimant who is incarcerated must be sent to the place of incarceration.

(D) Notice to a person arrested in connection with an offense giving rise to the forfeiture who is not incarcerated when notice is sent may be sent to the address that person last gave to the agency that arrested or released the person.

(E) Notice to a person from whom the property was seized who is not incarcerated when notice is sent may be sent to the last address that person gave to the agency that seized the property.

(iv) *When Notice is Sent.* Notice by the following means is sent on the date when it is placed in the mail, delivered to a commercial carrier, or sent by electronic mail.

(v) *Actual Notice.* A potential claimant who had actual notice of a forfeiture action may not oppose or seek relief from forfeiture because of the government's failure to send the required notice.

(5) *Responsive Pleadings.*

(a) *Filing a Claim.*

(i) A person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending. The claim must:

(A) identify the specific property claimed;

(B) identify the claimant and state the claimant's interest in the property;

(C) be signed by the claimant under penalty of perjury; and

(D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).

(ii) Unless the court for good cause sets a different time, the claim must be filed:

(A) by the time stated in a direct notice sent under Rule G(4)(b);



(B) if notice was published but direct notice was not sent to the claimant or the claimant's attorney, no later than 30 days after final publication of newspaper notice or legal notice under Rule G(4)(a) or no later than 60 days after the first day of publication on an official internet government forfeiture site; or

(C) if notice was not published and direct notice was not sent to the claimant or the claimant's attorney:

(1) if the property was in the government's possession, custody, or control when the complaint was filed, no later than 60 days after the filing, not counting any time when the complaint was under seal or when the action was stayed before execution of a warrant issued under Rule G(3)(b); or

(2) if the property was not in the government's possession, custody, or control when the complaint was filed, no later than 60 days after the government complied with 18 U.S.C. § 985(c) as to real property, or 60 days after process was executed on the property under Rule G(3).

(iii) A claim filed by a person asserting an interest as a bailee must identify the bailor, and if filed on the bailor's behalf must state the authority to do so.

(b) *Answer.* A claimant must serve and file an answer to the complaint or a motion under Rule 12 within 21 days after filing the claim. A claimant waives an objection to in rem jurisdiction or to venue if the objection is not made by motion or stated in the answer.

(6) *Special Interrogatories.*

(a) *Time and Scope.* The government may serve special interrogatories limited to the claimant's identity and relationship to the defendant property without the court's leave at any time after the claim is filed and before discovery is closed. But if the claimant serves a motion to dismiss the action, the government must serve the interrogatories within 21 days after the motion is served.

(b) *Answers or Objections.* Answers or objections to these interrogatories must be served within 21 days after the interrogatories are served.

(c) *Government's Response Deferred.* The government need not respond to a claimant's motion to dismiss the action under Rule G(8)(b) until 21 days after the claimant has answered these interrogatories.

(7) *Preserving, Preventing Criminal Use, and Disposing of Property; Sales.*

(a) *Preserving and Preventing Criminal Use of Property.* When the government does not have actual possession of the defendant property the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.

(b) *Interlocutory Sale or Delivery.*

(i) *Order to Sell.* On motion by a party or a person having custody of the property, the court may order all or part of the property sold if:

(A) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;

(B) the expense of keeping the property is excessive or is disproportionate to its fair market value;

(C) the property is subject to a mortgage or to taxes on which the owner is in default; or

(D) the court finds other good cause.

(ii) *Who Makes the Sale.* A sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates.

(iii) *Sale Procedures.* The sale is governed by 28 U.S.C. §§ 2001, 2002, and 2004, unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures.

(iv) *Sale Proceeds.* Sale proceeds are a substitute res subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.



(v) *Delivery on a Claimant's Motion.* The court may order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale under Rule G(7)(b)(i) and gives security under these rules.

(c) *Disposing of Forfeited Property.* Upon entry of a forfeiture judgment, the property or proceeds from selling the property must be disposed of as provided by law.

(8) *Motions.*

(a) *Motion to Suppress Use of the Property as Evidence.* If the defendant property was seized, a party with standing to contest the lawfulness of the seizure may move to suppress use of the property as evidence. Suppression does not affect forfeiture of the property based on independently derived evidence.

(b) *Motion to Dismiss the Action.*

(i) A claimant who establishes standing to contest forfeiture may move to dismiss the action under Rule 12(b).

(ii) In an action governed by 18 U.S.C. § 983(a)(3)(D) the complaint may not be dismissed on the ground that the government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property. The sufficiency of the complaint is governed by Rule G(2).

(c) *Motion to Strike a Claim or Answer.*

(i) At any time before trial, the government may move to strike a claim or answer:

(A) for failing to comply with Rule G(5) or (6), or

(B) because the claimant lacks standing.

(ii) The motion:

(A) must be decided before any motion by the claimant to dismiss the action; and

(B) may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the claimant can carry the burden of establishing standing by a preponderance of the evidence.

(d) *Petition to Release Property.*

(i) If a United States agency or an agency's contractor holds property for judicial or nonjudicial forfeiture under a statute governed by 18 U.S.C. § 983(f), a person who has filed a claim to the property may petition for its release under § 983(f).

(ii) If a petition for release is filed before a judicial forfeiture action is filed against the property, the petition may be filed either in the district where the property was seized or in the district where a warrant to seize the property issued. If a judicial forfeiture action against the property is later filed in another district — or if the government shows that the action will be filed in another district — the petition may be transferred to that district under 28 U.S.C. § 1404.

(e) *Excessive Fines.* A claimant may seek to mitigate a forfeiture under the Excessive Fines Clause of the Eighth Amendment by motion for summary judgment or by motion made after entry of a forfeiture judgment if:

(i) the claimant has pleaded the defense under Rule 8; and

(ii) the parties have had the opportunity to conduct civil discovery on the defense.

(9) *Trial.* Trial is to the court unless any party demands trial by jury under Rule 38.

(Added by order adopted April 12, 2006, effective December 1, 2006; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The times set in the former rule at 20 days have been revised to 21 days. See the Note to Rule 6. [12/1/09]

**RULES OF CRIMINAL  
PROCEDURE  
FOR  
UNITED STATES  
DISTRICT COURTS**

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Effective March 21, 1946,  
as amended to December 1, 2012.

ANALYSIS OF THE  
PROCEEDINGS  
OF THE  
FEDERAL JUDICIAL  
INVESTIGATION

OF THE  
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INVESTIGATION

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INVESTIGATION



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# RULES OF CRIMINAL PROCEDURE FOR UNITED STATES DISTRICT COURTS

## TITLE I. APPLICABILITY OF RULES

### Rule 1. Scope; Definitions.

(a) *Scope.*

(1) In General. These rules govern the procedure in all criminal proceedings in the United States district courts, the United States courts of appeals, and the Supreme Court of the United States.

(2) State or Local Judicial Officer. When a rule so states, it applies to a proceeding before a state or local judicial officer.

(3) Territorial Courts. These rules also govern the procedure in all criminal proceedings in the following courts:

(A) the district court of Guam;

(B) the district court for the Northern Mariana Islands, except as otherwise provided by law; and

(C) the district court of the Virgin Islands, except that the prosecution of offenses in that court must be by indictment or information as otherwise provided by law.

(4) Removed Proceedings. Although these rules govern all proceedings after removal from a state court, state law governs a dismissal by the prosecution.

(5) Excluded Proceedings. Proceedings not governed by these rules include:

(A) the extradition and rendition of a fugitive;

(B) a civil property forfeiture for violating a federal statute;

(C) the collection of a fine or penalty;

(D) a proceeding under a statute governing juvenile delinquency to the extent the procedure is inconsistent with the statute, unless Rule 20(d) provides otherwise;

(E) a dispute between seamen under 22 U.S.C. §§ 256-258; and

(F) a proceeding against a witness in a foreign country under 28 U.S.C. § 1784.

(b) *Definitions.* The following definitions apply to these rules:

(1) “*Attorney for the government*” means:

(A) the Attorney General or an authorized assistant;

(B) a United States attorney or an authorized assistant;

(C) when applicable to cases arising under Guam law, the Guam Attorney General or other person whom Guam law authorizes to act in the matter; and

(D) any other attorney authorized by law to conduct proceedings under these rules as a prosecutor.

(2) “*Court*” means a federal judge performing functions authorized by law.

(3) “*Federal judge*” means:

(A) a justice or judge of the United States as these terms are defined in 28 U.S.C. § 451;

(B) a magistrate judge; and

(C) a judge confirmed by the United States Senate and empowered by statute in any commonwealth, territory, or possession to perform a function to which a particular rule relates.

(4) “*Judge*” means a federal judge or a state or local judicial officer.

(5) “*Magistrate judge*” means a United States magistrate judge as defined in 28 U.S.C. §§ 631-639.

(6) “*Oath*” includes an affirmation.

(7) “*Organization*” is defined in 18 U.S.C. § 18.



(8) “*Petty offense*” is defined in 18 U.S.C. § 19.

(9) “*State*” includes the District of Columbia, and any commonwealth, territory, or possession of the United States.

(10) “*State or local judicial officer*” means:

(A) a state or local officer authorized to act under 18 U.S.C. § 3041; and

(B) a judicial officer empowered by statute in the District of Columbia or in any commonwealth, territory, or possession to perform a function to which a particular rule relates.

(11) “*Telephone*” means any technology for transmitting live electronic voice communication.

(12) “*Victim*” means a “crime victim” as defined in 18 U.S.C. § 3771(e).

(c) *Authority of a Justice or Judge of the United States.* When these rules authorize a magistrate judge to act, any other federal judge may also act.

(Amended by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 28, 1982, effective August 1, 1982, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 2002, effective December 1, 2002, by order adopted April 23, 2008, effective December 1, 2008, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

**Subdivisions (b)(11) and (12).** — The added definition clarifies that the term “telephone” includes technologies enabling live voice conversations that have developed since the traditional “land line” telephone. Calls placed by cell phone or from a computer over the internet, for example, would be included. The definition is limited to live communication in order to ensure contemporaneous communication and excludes voice recordings. Live voice communication should include services for the hearing impaired, or other contemporaneous translation, where necessary.

### Rule 2. Interpretation.

These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

(Amended by order adopted April 29, 2002, effective December 1, 2002.)

## TITLE II. PRELIMINARY PROCEEDINGS

### Rule 3. The Complaint.

The complaint is a written statement of the essential facts constituting the offense charged. Except as provided in Rule 4.1, it must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

(Amended by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

Under the amended rule, the complaint and supporting material may be submitted by telephone or reliable electronic means; however, the rule requires that the judicial officer administer the oath or affirmation in person or by telephone. The Committee concluded that the benefits of making it easier to obtain judicial oversight of the arrest decision and the increasing reliability and accessibility to electronic communication warranted amendment of the rule. The amendment makes clear that the submission of a complaint to a

judicial officer need not be done in person and may instead be made by telephone or other reliable electronic means. The successful experiences with electronic applications under Rule 41, which permits electronic applications for search warrants, support a comparable process for arrests. The provisions in Rule 41 have been transferred to new Rule 4.1, which governs applications by telephone or other electronic means under Rules 3, 4, 9, and 41.

#### **Rule 4. Arrest Warrant or Summons on a Complaint.**

(a) *Issuance.* If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same complaint. If a defendant fails to appear in response to a summons, a judge may, and upon request of an attorney for the government must, issue a warrant.

(b) *Form.*

(1) Warrant. — A warrant must:

(A) contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;

(B) describe the offense charged in the complaint;

(C) command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer; and

(D) be signed by a judge.

(2) Summons. — A summons must be in the same form as a warrant except that it must require the defendant to appear before a magistrate judge at a stated time and place.

(c) *Execution or Service, and Return.*

(1) By Whom. — Only a marshal or other authorized officer may execute a warrant. Any person authorized to serve a summons in a federal civil action may serve a summons.

(2) Location. — A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a federal statute authorizes an arrest.

(3) *Manner.*

(A) A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the original or a duplicate original warrant to the defendant as soon as possible.

(B) A summons is served on an individual defendant:

(i) by delivering a copy to the defendant personally; or

(ii) by leaving a copy at the defendant's residence or usual place of abode with a person of suitable age and discretion residing at that location and by mailing a copy to the defendant's last known address.

(C) A summons is served on an organization by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. A copy must also be mailed to the organization's last known address within the district or to its principal place of business elsewhere in the United States.

(4) *Return.*

(A) After executing a warrant, the officer must return it to the judge before whom the defendant is brought in accordance with Rule 5. The officer may do so by reliable electronic means. At the request of an attorney for the government, an unexecuted warrant must be brought back to and canceled by a magistrate judge or, if none is reasonably available, by a state or local judicial officer.

(B) The person to whom a summons was delivered for service must return it on or before the return day.



(C) At the request of an attorney for the government, a judge may deliver an unexecuted warrant, an unserved summons, or a copy of the warrant or summons to the marshal or other authorized person for execution or service.

(d) *Warrant by Telephone or Other Reliable Electronic Means.* In accordance with Rule 4.1, a magistrate judge may issue a warrant or summons based on information communicated by telephone or other reliable electronic means.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

Rule 4 is amended in three respects to make the arrest warrant process more efficient through the use of technology.

**Subdivision (c).** — First, Rule 4(c)(3)(A) authorizes a law enforcement officer to retain a duplicate original arrest warrant, consistent with the change to subdivision (d), which permits a court to issue an arrest warrant electronically rather than by physical delivery. The duplicate original warrant may be used in lieu of the original warrant signed by the magistrate judge to satisfy the requirement that the defendant be shown the warrant at or soon after an arrest. *Cf.* Rule 4.1(b)(5) (providing for a duplicate original search warrant).

Second, consistent with the amendment to Rule 41(f), Rule 4(c)(4)(A) permits an officer to make a return of the arrest warrant electronically. Requiring an in-person return can be burdensome on law enforcement, particularly in large districts when the return can require a great deal of time and travel. In contrast, no interest of the accused is affected by allowing what is normally a ministerial act to be done electronically.

**Subdivision (d).** — Rule 4(d) provides that a magistrate judge may issue an arrest warrant or summons based on information submitted electronically rather than in person. This change works in conjunction with the amendment to Rule 3, which permits a magistrate judge to consider a criminal complaint and accompanying documents that are submitted electronically. Subdivision (d) also incorporates the procedures for applying for and issuing electronic warrants set forth in Rule 4.1.

### Rule 4.1. Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means.

(a) *In General.* A magistrate judge may consider information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue a warrant or summons.

(b) *Procedures.* If a magistrate judge decides to proceed under this rule, the following procedures apply:

(1) *Taking Testimony Under Oath.* The judge must place under oath — and may examine — the applicant and any person on whose testimony the application is based.

(2) *Creating a Record of the Testimony and Exhibits.*

(A) *Testimony Limited to Attestation.* If the applicant does no more than attest to the contents of a written affidavit submitted by reliable electronic means, the judge must acknowledge the attestation in writing on the affidavit.

(B) *Additional Testimony or Exhibits.* If the judge considers additional testimony or exhibits, the judge must:

(i) have the testimony recorded verbatim by an electronic recording device, by a court reporter, or in writing;

(ii) have any recording or reporter's notes transcribed, have the transcription certified as accurate, and file it;

(iii) sign any other written record, certify its accuracy, and file it; and



(iv) make sure that the exhibits are filed.

(3) *Preparing a Proposed Duplicate Original of a Complaint, Warrant, or Summons.* The applicant must prepare a proposed duplicate original of a complaint, warrant, or summons, and must read or otherwise transmit its contents verbatim to the judge.

(4) *Preparing an Original Complaint, Warrant, or Summons.* If the applicant reads the contents of the proposed duplicate original, the judge must enter those contents into an original complaint, warrant, or summons. If the applicant transmits the contents by reliable electronic means, the transmission received by the judge may serve as the original.

(5) *Modification.* The judge may modify the complaint, warrant, or summons. The judge must then:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(6) *Issuance.* To issue the warrant or summons, the judge must:

(A) sign the original documents;

(B) enter the date and time of issuance on the warrant or summons; and

(C) transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

(c) *Suppression Limited.* Absent a finding of bad faith, evidence obtained from a warrant issued under this rule is not subject to suppression on the ground that issuing the warrant in this manner was unreasonable under the circumstances.

(Added by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

New Rule 4.1 brings together in one rule the procedures for using a telephone or other reliable electronic means for reviewing complaints and applying for and issuing warrants and summonses. In drafting Rule 4.1, the Committee recognized that modern technological developments have improved access to judicial officers, thereby reducing the necessity of government action without prior judicial approval. Rule 4.1 prescribes uniform procedures and ensures an accurate record.

The procedures that have governed search warrants “by telephonic or other means,” formerly in Rule 41(d)(3) and (e)(3), have been relocated to this rule, reordered for easier application, and extended to arrest warrants, complaints, and summonses. Successful experience using electronic applications for search warrants under Rule 41, combined with increased access to reliable electronic communication, support the extension of these procedures to arrest warrants, complaints, and summonses.

With one exception noted in the next paragraph, the new rule preserves the procedures formerly in Rule 41 without change. By using the term “magistrate judge,” the rule continues to require, as did former Rule 41(d)(3) and (e)(3), that a federal judge (and not a state judge) handle electronic applications, approvals, and issuances. The rule continues to require that the judge place an applicant under oath over the telephone, and permits the judge to examine the applicant, as Rule 41 had provided. Rule 4.1(b) continues to require that when electronic means are used to issue the warrant, the magistrate judge retain the original warrant. Minor changes in wording and reorganization of the language formerly in Rule 41 were made to aid in application of the rules, with no intended change in meaning.

The only substantive change to the procedures formerly in Rule 41(d)(3) and (e)(3) appears in new Rule 4.1(b)(2)(A). Former Rule 41(d)(3)(B)(ii) required the magistrate judge to make a verbatim record of the entire conversation with the applicant. New Rule 4.1(b)(2)(A) provides that when a warrant application and affidavit are sent electronically to the magistrate judge and the telephone conversation between the magistrate judge and affiant is limited to attesting to those written documents, a verbatim record of the entire conversation is no longer required. Rather, the magistrate judge should simply acknowledge in writing the attestation on the affidavit. This may be done, for example, by signing

the jurat included on the Administrative Office of U.S. Courts form. Rule 4.1(b)(2)(B) carries forward the requirements formerly in Rule 41 to cases in which the magistrate judge considers testimony or exhibits in addition to the affidavit. In addition, Rule 4.1(b)(6) specifies that in order to issue a warrant or summons the magistrate judge must sign all of the original documents and enter the date and time of issuance on the warrant or summons. This procedure will create and maintain a complete record of the warrant application process.

### **Rule 5. Initial Appearance.**

#### **(a) *In General.***

##### **(1) Appearance Upon an Arrest.**

(A) A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise.

(B) A person making an arrest outside the United States must take the defendant without unnecessary delay before a magistrate judge, unless a statute provides otherwise.

##### **(2) Exceptions.**

(A) An officer making an arrest under a warrant issued upon a complaint charging solely a violation of 18 U.S.C. § 1073 need not comply with this rule if:

(i) the person arrested is transferred without unnecessary delay to the custody of appropriate state or local authorities in the district of arrest; and

(ii) an attorney for the government moves promptly, in the district where the warrant was issued, to dismiss the complaint.

(B) If a defendant is arrested for violating probation or supervised release, Rule 32.1 applies.

(C) If a defendant is arrested for failing to appear in another district, Rule 40 applies.

(3) Appearance Upon a Summons. When a defendant appears in response to a summons under Rule 4, a magistrate judge must proceed under Rule 5(d) or (e), as applicable.

(b) *Arrest Without a Warrant.* If a defendant is arrested without a warrant, a complaint meeting Rule 4(a)'s requirement of probable cause must be promptly filed in the district where the offense was allegedly committed.

#### **(c) *Place of Initial Appearance; Transfer to Another District.***

(1) Arrest in the District Where the Offense Was Allegedly Committed. If the defendant is arrested in the district where the offense was allegedly committed:

(A) the initial appearance must be in that district; and

(B) if a magistrate judge is not reasonably available, the initial appearance may be before a state or local judicial officer.

(2) Arrest in a District Other Than Where the Offense Was Allegedly Committed. If the defendant was arrested in a district other than where the offense was allegedly committed, the initial appearance must be:

(A) in the district of arrest; or

(B) in an adjacent district if:

(i) the appearance can occur more promptly there; or

(ii) the offense was allegedly committed there and the initial appearance will occur on the day of arrest.

(3) *Procedures in a District Other Than Where the Offense Was Allegedly Committed.* If the initial appearance occurs in a district other than where the offense was allegedly committed, the following procedures apply:

(A) the magistrate judge must inform the defendant about the provisions of Rule 20;

(B) if the defendant was arrested without a warrant, the district court where the offense was allegedly committed must first issue a warrant before the magistrate judge transfers the defendant to that district;



(C) the magistrate judge must conduct a preliminary hearing if required by Rule 5.1;

(D) the magistrate judge must transfer the defendant to the district where the offense was allegedly committed if:

(i) the government produces the warrant, a certified copy of the warrant, or a reliable electronic form of either; and

(ii) the judge finds that the defendant is the same person named in the indictment, information, or warrant; and

(E) when a defendant is transferred and discharged, the clerk must promptly transmit the papers and any bail to the clerk in the district where the offense was allegedly committed.

(4) *Procedure for Persons Extradited to the United States.* If the defendant is surrendered to the United States in accordance with a request for the defendant's extradition, the initial appearance must be in the district (or one of the districts) where the offense is charged.

(d) *Procedure in a Felony Case.*

(1) Advice. If the defendant is charged with a felony, the judge must inform the defendant of the following:

(A) the complaint against the defendant, and any affidavit filed with it;

(B) the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(C) the circumstances, if any, under which the defendant may secure pretrial release;

(D) any right to a preliminary hearing; and

(E) the defendant's right not to make a statement, and that any statement made may be used against the defendant.

(2) Consulting with Counsel. The judge must allow the defendant reasonable opportunity to consult with counsel.

(3) Detention or Release. The judge must detain or release the defendant as provided by statute or these rules.

(4) Plea. A defendant may be asked to plead only under Rule 10.

(e) *Procedure in a Misdemeanor Case.* If the defendant is charged with a misdemeanor only, the judge must inform the defendant in accordance with Rule 58(b)(2).

(f) *Video Teleconferencing.* Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 28, 1982, effective August 1, 1982, by P.L. 98-473, Title II, § 209(a), approved October 12, 1984, by order adopted March 9, 1987, effective August 1, 1987, by order adopted May 1, 1990, effective December 1, 1990, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 27, 1995, effective December 1, 1995, by order adopted April 29, 2002, effective December 1, 2002, by order adopted April 12, 2006, effective December 1, 2006, and by order adopted April 23, 2012, effective December 1, 2012.)

## COMMENT

**Subdivision (c)(4).** The amendment codifies the longstanding practice that persons who are charged with criminal offenses in the United States and surrendered to the United States following extradition in a foreign country make their initial appearance in the jurisdiction that sought their extradition.

This rule is applicable even if the defendant arrives first in another district. The earlier stages of the extradition process have already fulfilled some of the functions of the initial appearance. During foreign extradition proceedings, the extradited person, assisted by counsel, is afforded an opportunity to review the charging document, U.S. arrest warrant, and supporting evidence. Rule 5(a)(1)(B) requires the person be taken before a magistrate judge without unnecessary delay. Consistent with this obligation, it is preferable not to



delay an extradited person's transportation to hold an initial appearance in the district of arrival, even if the person will be present in that district for some time as a result of connecting flights or logistical difficulties. Interrupting an extradited defendant's transportation at this point can impair his or her ability to obtain and consult with trial counsel and to prepare his or her defense in the district where the charges are pending.

**Subdivision (d)(1)(F).** This amendment is designed to ensure that the United States fulfills its international obligations under Article 36 of the Vienna Convention on Consular Relations, and other bilateral treaties. Bilateral agreements with numerous countries require consular notification whether or not the detained foreign national requests it. Article 36 of the Vienna Convention provides that detained foreign nationals shall be advised that they may have the consulate of their home country notified of their arrest and detention. At the time of this amendment, many questions remain unresolved concerning Article 36, including whether it creates individual rights that may be invoked in a judicial proceeding and what, if any, remedy may exist for a violation of Article 36. *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006). This amendment does not address those questions. [12/1/12]

### Rule 5.1. Preliminary Hearing.

(a) *In General.* If a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless:

- (1) the defendant waives the hearing;
- (2) the defendant is indicted;
- (3) the government files an information under Rule 7(b) charging the defendant with a felony;
- (4) the government files an information charging the defendant with a misdemeanor; or

(5) the defendant is charged with a misdemeanor and consents to trial before a magistrate judge.

(b) *Selecting a District.* A defendant arrested in a district other than where the offense was allegedly committed may elect to have the preliminary hearing conducted in the district where the prosecution is pending.

(c) *Scheduling.* The magistrate judge must hold the preliminary hearing within a reasonable time, but no later than 14 days after the initial appearance if the defendant is in custody and no later than 21 days if not in custody.

(d) *Extending the Time.* With the defendant's consent and upon a showing of good cause — taking into account the public interest in the prompt disposition of criminal cases — a magistrate judge may extend the time limits in Rule 5.1(c) one or more times. If the defendant does not consent, the magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(e) *Hearing and Finding.* At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings.

(f) *Discharging the Defendant.* If the magistrate judge finds no probable cause to believe an offense has been committed or the defendant committed it, the magistrate judge must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.

(g) *Recording the Proceedings.* The preliminary hearing must be recorded by a court reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable Judicial Conference regulations.

(h) *Producing a Statement.*

(1) *In General.* Rule 26.2(a)—(d) and (f) applies at any hearing under this rule, unless the magistrate judge for good cause rules otherwise in a particular case.

(2) **Sanctions for Not Producing a Statement.** — If a party disobeys a Rule 26.2 order to deliver a statement to the moving party, the magistrate judge must not consider the testimony of a witness whose statement is withheld.

(Added by order adopted April 24, 1972, effective October 1, 1972, amended by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 24, 1998, effective December 1, 1998, by order adopted April 29, 2002, effective December 1, 2002; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The times set in the former rule at 10 or 20 days have been revised to 14 or 21 days. See the Committee Note to Rule 45(a). [12/1/09]

### TITLE III. THE GRAND JURY, THE INDICTMENT, AND THE INFORMATION

#### Rule 6. The Grand Jury.

(a) *Summoning a Grand Jury.*

(1) *In General.* When the public interest so requires, the court must order that one or more grand juries be summoned. A grand jury must have 16 to 23 members, and the court must order that enough legally qualified persons be summoned to meet this requirement.

(2) *Alternate Jurors.* When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.

(b) *Objection to the Grand Jury or to a Grand Juror.*

(1) *Challenges.* Either the government or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(2) *Motion to Dismiss an Indictment.* A party may move to dismiss the indictment based on an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under Rule 6(b)(1). The motion to dismiss is governed by 28 U.S.C. § 1867(e). The court must not dismiss the indictment on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(c) *Foreperson and Deputy Foreperson.* The court will appoint one juror as the foreperson and another as the deputy foreperson. In the foreperson's absence, the deputy foreperson will act as the foreperson. The foreperson may administer oaths and affirmations and will sign all indictments. The foreperson—or another juror designated by the foreperson—will record the number of jurors concurring in every indictment and will file the record with the clerk, but the record may not be made public unless the court so orders.

(d) *Who May Be Present.*

(1) *While the Grand Jury Is in Session.* The following persons may be present while the grand jury is in session: attorneys for the government, the witness being questioned, interpreters when needed, and a court reporter or an operator of a recording device.

(2) *During Deliberations and Voting.* No person other than the jurors, and any interpreter needed to assist a hearing-impaired or speech-impaired juror, may be present while the grand jury is deliberating or voting.

(e) *Recording and Disclosing the Proceedings.*

(1) *Recording the Proceedings.* Except while the grand jury is deliberating or voting, all proceedings must be recorded by a court reporter or by a suitable recording device. But the validity of a prosecution is not affected by the unintentional failure to make a recording. Unless the court orders otherwise, an attorney for the government will retain



control of the recording, the reporter's notes, and any transcript prepared from those notes.

(2) *Secrecy.*

(A) No obligation of secrecy may be imposed on any person except in accordance with Rule 6(e)(2)(B).

(B) Unless these rules provide otherwise, the following persons must not disclose a matter occurring before the grand jury:

- (i) a grand juror;
- (ii) an interpreter;
- (iii) a court reporter;
- (iv) an operator of a recording device;
- (v) a person who transcribes recorded testimony;
- (vi) an attorney for the government; or
- (vii) a person to whom disclosure is made under Rule 6(e)(3)(A)(ii) or (iii).

(3) *Exceptions.*

(A) Disclosure of a grand-jury matter—other than the grand jury's deliberations or any grand juror's vote—may be made to:

- (i) an attorney for the government for use in performing that attorney's duty;
- (ii) any government personnel including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law; or
- (iii) a person authorized by 18 U.S.C. § 3322.

(B) A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made, and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

(C) An attorney for the government may disclose any grand-jury matter to another federal grand jury.

(D) An attorney for the government may disclose any grand-jury matter involving foreign intelligence, counterintelligence (as defined in 50 U.S.C. § 401a), or foreign intelligence information (as defined in Rule 6(e)(3)(D)(iii)) to any federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official's duties. An attorney for the government may also disclose any grand-jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate federal, state, state subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities.

(i) Any official who receives information under Rule 6(e)(3)(D) may use the information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Any state, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only in a manner consistent with any guidelines issued by the Attorney General and the Director of National Intelligence.

(ii) Within a reasonable time after disclosure is made under Rule 6(e)(3)(D), an attorney for the government must file, under seal, a notice with the court in the district where the grand jury convened stating that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

(iii) As used in Rule 6(e)(3)(D), the term "foreign intelligence information" means:



(a) information, whether or not it concerns a United States person, that relates to the ability of the United States to protect against—

- actual or potential attack or other grave hostile acts of a foreign power or its agent;
- sabotage or international terrorism by a foreign power or its agent; or
- clandestine intelligence activities by an intelligence service or network of a foreign power or by its agent; or

(b) information, whether or not it concerns a United States person, with respect to a foreign power or foreign territory that relates to—

- the national defense or the security of the United States; or
- the conduct of the foreign affairs of the United States.

(E) The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter:

- (i) preliminarily to or in connection with a judicial proceeding;
- (ii) at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury;
- (iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;
- (iv) at the request of the government if it shows that the matter may disclose a violation of State, Indian tribal, or foreign criminal law, as long as the disclosure is to an appropriate state, state subdivision, Indian tribal, or foreign government official for the purpose of enforcing that law; or

(v) at the request of the government if it shows that the matter may disclose a violation of military criminal law under the Uniform Code of Military Justice, as long as the disclosure is to an appropriate military official for the purpose of enforcing that law.

(F) A petition to disclose a grand jury matter under Rule 6(e)(3)(E)(i) must be filed in the district where the grand jury convened. Unless the hearing is *ex parte*—as it may be when the government is the petitioner—the petitioner must serve the petition on, and the court must afford a reasonable opportunity to appear and be heard to:

- (i) an attorney for the government;
- (ii) the parties to the judicial proceeding; and
- (iii) any other person whom the court may designate.

(G) If the petition to disclose arises out of a judicial proceeding in another district, the petitioned court must transfer the petition to the other court unless the petitioned court can reasonably determine whether disclosure is proper. If the petitioned court decides to transfer, it must send to the transferee court the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand-jury secrecy. The transferee court must afford those persons identified in Rule 6(e)(3)(F) a reasonable opportunity to appear and be heard.

(4) *Sealed Indictment.* The magistrate judge to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. The clerk must then seal the indictment, and no person may disclose the indictment's existence except as necessary to issue or execute a warrant or summons.

(5) *Closed Hearing.* Subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent disclosure of a matter occurring before a grand jury.

(6) *Sealed Records.* Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.

(7) *Contempt.* A knowing violation of Rule 6, or of any guidelines jointly issued by the Attorney General and the Director of National Intelligence under Rule 6, may be punished as a contempt of court.

(f) *Indictment and Return.* A grand jury may indict only if at least 12 jurors concur. The grand jury—or its foreperson or deputy foreperson—must return the indictment to a magistrate judge in open court. To avoid unnecessary cost or delay, the magistrate judge

may take the return by video teleconference from the court where the grand jury sits. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.

(g) *Discharging the Grand Jury.* A grand jury must serve until the court discharges it, but it may serve more than 18 months only if the court, having determined that an extension is in the public interest, extends the grand jury's service. An extension may be granted for no more than 6 months, except as otherwise provided by statute.

(h) *Excusing a Juror.* At any time, for good cause, the court may excuse a juror either temporarily or permanently, and if permanently, the court may impanel an alternate juror in place of the excused juror.

(i) *"Indian Tribe" Defined.* "Indian tribe" means an Indian tribe recognized by the Secretary of the Interior on a list published in the Federal Register under 25 U.S.C. § 479a-1.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 26, 1976 and July 8, 1976, effective August 1, 1976, by order adopted July 30, 1977, effective October 1, 1977, by order adopted April 30, 1979, effective August 1, 1979, by order adopted April 28, 1983, effective August 1, 1983, by order adopted October 12, 1984, effective November 1, 1987, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 9, 1987, effective August 1, 1987, by P.L. 98-473, Title II, § 215(f), effective November 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 26, 1999, effective December 1, 1999, October 26, 2001, by order adopted April 29, 2002, effective December 1, 2002; amended by Dec. 17, 2004, P.L. 108-458, § 6501, 118 Stat. 3683, by order adopted April 12, 2006, effective December 1, 2006, and by order adopted April 26, 2011, effective December 1, 2011.)

## COMMENT

**Subdivision (f).** The amendment expressly allows a judge to take a grand jury return by video teleconference. Having the judge in the same courtroom remains the preferred practice because it promotes the public's confidence in the integrity and solemnity of a federal criminal proceeding. But there are situations when no judge is present in the courthouse where the grand jury sits, and a judge would be required to travel long distances to take the return. Avoiding delay is also a factor, since the Speedy Trial Act, 18 U.S.C. § 3161(b), requires that an indictment be returned within thirty days of the arrest of an individual to avoid dismissal of the case. The amendment is particularly helpful when there is no judge present at a courthouse where the grand jury sits and the nearest judge is hundreds of miles away.

Under the amendment, the grand jury (or the foreperson) would appear in a courtroom in the United States courthouse where the grand jury sits. Utilizing video teleconference, the judge could participate by video from a remote location, convene court, and take the return. Indictments could be transmitted in advance to the judge for review by reliable electronic means. This process accommodates the Speedy Trial Act, 18 U.S.C. § 3161(b), and preserves the judge's time and safety.

## Rule 7. The Indictment and the Information.

(a) *When Used.*

(1) *Felony.* An offense (other than criminal contempt) must be prosecuted by an indictment if it is punishable:

(A) by death; or

(B) by imprisonment for more than one year.

(2) *Misdemeanor.* An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1).



(b) *Waiving Indictment.* An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant — in open court and after being advised of the nature of the charge and of the defendant's rights — waives prosecution by indictment.

(c) *Nature and Contents.*

(1) *In General.* The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. For purposes of an indictment referred to in section 3282 of title 18, United States Code, for which the identity of the defendant is unknown, it shall be sufficient for the indictment to describe the defendant as an individual whose name is unknown, but who has a particular DNA profile, as that term is defined in section 3282.

(2) *Citation Error.* Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction.

(d) *Surplusage.* Upon the defendant's motion, the court may strike surplusage from the indictment or information.

(e) *Amending an Information.* Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding.

(f) *Bill of Particulars.* The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 30, 1979, effective August 1, 1979, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 29, 2002, effective December 1, 2002; April 30, 2003; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

**Subdivision (c).** The provision regarding forfeiture is obsolete. In 2000 the same language was repeated in subdivision (a) of Rule 32.2, which was intended to consolidate the rules dealing with forfeiture. [12/1/09]

### Rule 8. Joinder of Offenses or Defendants.

(a) *Joinder of Offenses.* The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged — whether felonies or misdemeanors or both — are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

(b) *Joinder of Defendants.* The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.



(Amended by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 9. Arrest Warrant or Summons on an Indictment or Information.**

(a) *Issuance.* The court must issue a warrant — or at the government's request, a summons — for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. The court may issue more than one warrant or summons for the same defendant. If a defendant fails to appear in response to a summons, the court may, and upon request of an attorney for the government must, issue a warrant. The court must issue the arrest warrant to an officer authorized to execute it or the summons to a person authorized to serve it.

(b) *Form.*

(1) *Warrant.* The warrant must conform to Rule 4(b)(1) except that it must be signed by the clerk and must describe the offense charged in the indictment or information.

(2) *Summons.* The summons must be in the same form as a warrant except that it must require the defendant to appear before the court at a stated time and place.

(c) *Execution or Service; Return; Initial Appearance.*

(1) *Execution or Service.*

(A) The warrant must be executed or the summons served as provided in Rule 4(c)(1), (2), and (3).

(B) The officer executing the warrant must proceed in accordance with Rule 5(a)(1).

(2) *Return.* A warrant or summons must be returned in accordance with Rule 4(c)(4).

(3) *Initial Appearance.* When an arrested or summoned defendant first appears before the court, the judge must proceed under Rule 5.

(d) *Warrant by Telephone or Other Means.* In accordance with Rule 4.1, a magistrate judge may issue an arrest warrant or summons based on information communicated by telephone or other reliable electronic means.

(Amended by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, by order adopted December 12, 1975, by order adopted April 30, 1979, effective August 1, 1979, by order adopted April 28, 1982, effective August 1, 1982, and order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 26, 2011, effective December 1, 2011.)

### **COMMENT**

**Subdivision (d).** Rule 9(d) authorizes a court to issue an arrest warrant or summons electronically on the return of an indictment or the filing of an information. In large judicial districts the need to travel to the courthouse to obtain an arrest warrant in person can be burdensome, and advances in technology make the secure transmission of a reliable version of the warrant or summons possible. This change works in conjunction with the amendment to Rule 6 that permits the electronic return of an indictment, which similarly eliminates the need to travel to the courthouse.

## **TITLE IV. ARRAIGNMENT AND PREPARATION FOR TRIAL**

### **Rule 10. Arraignment.**

(a) *In General.* An arraignment must be conducted in open court and must consist of:

(1) ensuring that the defendant has a copy of the indictment or information;

(2) reading the indictment or information to the defendant or stating to the defendant the substance of the charge; and then

(3) asking the defendant to plead to the indictment or information.

(b) *Waiving Appearance.* A defendant need not be present for the arraignment if:

- (1) the defendant has been charged by indictment or misdemeanor information;
  - (2) the defendant, in a written waiver signed by both the defendant and defense counsel, has waived appearance and has affirmed that the defendant received a copy of the indictment or information and that the plea is not guilty; and
  - (3) the court accepts the waiver.
- (c) *Video Teleconferencing.* Video teleconferencing may be used to arraign a defendant if the defendant consents.

(Amended by order adopted March 9, 1987, effective August 1, 1987, and by order adopted April 29, 2002, effective December 1, 2002.)

### Rule 11. Pleas.

(a) *Entering a Plea.*

(1) *In General.* A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea.* Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea.* If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

(b) *Considering and Accepting a Guilty or Nolo Contendere Plea.*

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel and if necessary have the court appoint counsel at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); and

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

(2) *Ensuring That a Plea Is Voluntary.* Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine



that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) *Determining the Factual Basis for a Plea.* Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) *Plea Agreement Procedure.*

(1) *In General.* An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) *Disclosing a Plea Agreement.* The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) *Judicial Consideration of a Plea Agreement.*

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) *Accepting a Plea Agreement.* If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) *Rejecting a Plea Agreement.* If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) *Withdrawing a Guilty or Nolo Contendere Plea.* A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason; or

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

(B) the defendant can show a fair and just reason for requesting the withdrawal.

(e) *Finality of a Guilty or Nolo Contendere Plea.* After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(f) *Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements.* The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Federal Rule of Evidence 410.

(g) *Recording the Proceedings.* The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).



(h) *Harmless Error*. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective August 1, 1975 and December 1, 1975, by order adopted April 30, 1979, effective August 1, 1979 and December 1, 1980, by order adopted April 28, 1982, effective August 1, 1982, by order adopted April 28, 1983, effective August 1, 1983, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 9, 1987, effective August 1, 1987, by P.L.100-690, § 7076, effective November 18, 1988, by order adopted April 25, 1989, effective December 1, 1989, by order adopted April 26, 1999, effective December 1, 1999, by order adopted April 29, 2002, effective December 1, 2002; and by order adopted April 30, 2007, effective December 1, 2007.)

### COMMENT

**Subdivision (b)(1)(M).** The amendment conforms Rule 11 to the supreme court's decision in *United States v. Booker*, 543 U.S. 220 (2005). *Booker* held that the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C. § 3553(b)(1), violates the sixth Amendment right to jury trial. With this provision severed and excised, the court held, the sentencing Reform Act "makes the Guidelines effectively advisory," and "requires a sentencing court to consider Guidelines ranges, see 18 U.S.C. § 3553(a)(4) (Supp. 2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a) (Supp. 2004)." *Id.* at 245-46. Rule 11(b)(M) incorporates this analysis into the information provided to the defendant at the time of a plea of guilty or nolo contendere.

## Rule 12. Pleadings and Pretrial Motions.

(a) *Pleadings*. The pleadings in a criminal proceeding are the indictment, the information, and the pleas of not guilty, guilty, and nolo contendere.

(b) *Pretrial Motions*.

(1) *In General*. Rule 47 applies to a pretrial motion.

(2) *Motions That May Be Made Before Trial*. A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial of the general issue.

(3) *Motions That Must Be Made Before Trial*. The following must be raised before trial:

(A) a motion alleging a defect in instituting the prosecution;

(B) a motion alleging a defect in the indictment or information but at any time while the case is pending, the court may hear a claim that the indictment or information fails to invoke the court's jurisdiction or to state an offense;

(C) a motion to suppress evidence;

(D) a Rule 14 motion to sever charges or defendants; and

(E) a Rule 16 motion for discovery.

(4) *Notice of the Government's Intent to Use Evidence*.

(A) *At the Government's Discretion*. At the arraignment or as soon afterward as practicable, the government may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before trial under Rule 12(b)(3)(C).

(B) *At the Defendant's Request*. At the arraignment or as soon afterward as practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(C), request notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.

(c) *Motion Deadline.* The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing.

(d) *Ruling on a Motion.* The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(e) *Waiver of a Defense, Objection, or Request.* A party waives any Rule 12(b)(3) defense, objection, or request not raised by the deadline the court sets under Rule 12(c) or by any extension the court provides. For good cause, the court may grant relief from the waiver.

(f) *Recording the Proceedings.* All proceedings at a motion hearing, including any findings of fact and conclusions of law made orally by the court, must be recorded by a court reporter or a suitable recording device.

(g) *Defendant's Continued Custody or Release Status.* If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the indictment, or in the information, it may order the defendant to be released or detained under 18 U.S.C. § 3142 for a specified time until a new indictment or information is filed. This rule does not affect any federal statutory period of limitations.

(h) *Producing Statements at a Suppression Hearing.* Rule 26.2 applies at a suppression hearing under Rule 12(b)(3)(C). At a suppression hearing, a law enforcement officer is considered a government witness.

(Amended by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by order adopted April 28, 1983, effective August 1, 1983, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 12.1. Notice of an Alibi Defense.**

(a) *Government's Request for Notice and Defendant's Response.*

(1) *Government's Request.* An attorney for the government may request in writing that the defendant notify an attorney for the government of any intended alibi defense. The request must state the time, date, and place of the alleged offense.

(2) *Defendant's Response.* Within 14 days after the request, or at some other time the court sets, the defendant must serve written notice on an attorney for the government of any intended alibi defense. The defendant's notice must state:

(A) each specific place where the defendant claims to have been at the time of the alleged offense; and

(B) the name, address, and telephone number of each alibi witness on whom the defendant intends to rely.

(b) *Disclosing Government Witnesses.*

(1) *Disclosure.*

(A) *In General.* If the defendant serves a Rule 12.1(a)(2) notice, an attorney for the government must disclose in writing to the defendant or the defendant's attorney:

(i) the name of each witness — and the address and telephone number of each witness other than a victim — that the government intends to rely on to establish that the defendant was present at the scene of the alleged offense; and

(ii) each government rebuttal witness to the defendant's alibi defense.

(B) *Victim's Address and Telephone Number.* If the government intends to rely on a victim's testimony to establish that the defendant was present at the scene of the alleged offense and the defendant establishes a need for the victim's address and telephone number, the court may:

(i) order the government to provide the information in writing to the defendant or the defendant's attorney; or



(ii) fashion a reasonable procedure that allows preparation of the defense and also protects the victim's interests.

(2) *Time to Disclose.* Unless the court directs otherwise, an attorney for the government must give its Rule 12.1(b)(1) disclosure within 14 days after the defendant serves notice of an intended alibi defense under Rule 12.1(a)(2), but no later than 14 days before trial.

(c) *Continuing Duty to Disclose.*

(1) *In General.* Both an attorney for the government and the defendant must promptly disclose in writing to the other party the name of each additional witness — and the address and telephone number of each additional witness other than a victim — if:

(A) the disclosing party learns of the witness before or during trial; and

(B) the witness should have been disclosed under Rule 12.1(a) or (b) if the disclosing party had known of the witness earlier.

(2) *Address and Telephone Number of an Additional Victim Witness.* The address and telephone number of an additional victim witness must not be disclosed except as provided in Rule 12.1 (b)(1)(B).

(d) *Exceptions.* For good cause, the court may grant an exception to any requirement of Rule 12.1(a)-(c).

(e) *Failure to Comply.* If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not limit the defendant's right to testify.

(f) *Inadmissibility of Withdrawn Intention.* Evidence of an intention to rely on an alibi defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(Added by order adopted April 22, 1974, effective December 1, 1975, amended by order adopted July 31, 1975, effective December 1, 1975, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 23, 2008, effective December 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

The times set in the former rule at 10 days have been revised to 14 days. See the Committee Note to Rule 45(a). [12/1/09]

### Rule 12.2. Notice of an Insanity Defense; Mental Examination.

(a) *Notice of an Insanity Defense.* A defendant who intends to assert a defense of insanity at the time of the alleged offense must so notify an attorney for the government in writing within the time provided for filing a pretrial motion, or at any later time the court sets, and file a copy of the notice with the clerk. A defendant who fails to do so cannot rely on an insanity defense. The court may, for good cause, allow the defendant to file the notice late, grant additional trial-preparation time, or make other appropriate orders.

(b) *Notice of Expert Evidence of a Mental Condition.* If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on either (1) the issue of guilt or (2) the issue of punishment in a capital case, the defendant must — within the time provided for filing a pretrial motion or at any later time the court sets — notify an attorney for the government in writing of this intention and file a copy of the notice with the clerk. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

(c) *Mental Examination.*

(1) Authority to Order an Examination; Procedures.



(A) The court may order the defendant to submit to a competency examination under 18 U.S.C. § 4241.

(B) If the defendant provides notice under Rule 12.2(a), the court must, upon the government's motion, order the defendant to be examined under 18 U.S.C. § 4242. If the defendant provides notice under Rule 12.2(b) the court may, upon the government's motion, order the defendant to be examined under procedures ordered by the court.

(2) *Disclosing Results and Reports of Capital Sentencing Examination.* — The results and reports of any examination conducted solely under Rule 12.2 (c)(1) after notice under Rule 12.2(b)(2) must be sealed and must not be disclosed to any attorney for the government or the defendant unless the defendant is found guilty of one or more capital crimes and the defendant confirms an intent to offer during sentencing proceedings expert evidence on mental condition.

(3) *Disclosing Results and Reports of the Defendant's Expert Examination.* — After disclosure under Rule 12.2(c)(2) of the results and reports of the government's examination, the defendant must disclose to the government the results and reports of any examination on mental condition conducted by the defendant's expert about which the defendant intends to introduce expert evidence.

(4) *Inadmissibility of a Defendant's Statements.* — No statement made by a defendant in the course of any examination conducted under this rule (whether conducted with or without the defendant's consent), no testimony by the expert based on the statement, and no other fruits of the statement may be admitted into evidence against the defendant in any criminal proceeding except on an issue regarding mental condition on which the defendant:

(A) has introduced evidence of incompetency or evidence requiring notice under Rule 12.2(a) or (b)(1), or

(B) has introduced expert evidence in a capital sentencing proceeding requiring notice under Rule 12.2(b)(2).

(d) *Failure to Comply.*

(1) *Failure to Give Notice or to Submit to Examination.* The court may exclude any expert evidence from the defendant on the issue of the defendant's mental disease, mental defect, or any other mental condition bearing on the defendant's guilt or the issue of punishment in a capital case if the defendant fails to:

(A) give notice under Rule 12.2(b); or

(B) submit to an examination when ordered under Rule 12.2(c).

(2) *Failure to Disclose.* The court may exclude any expert evidence for which the defendant has failed to comply with the disclosure requirement of Rule 12.2(c)(3).

(e) *Inadmissibility of Withdrawn Intention.* Evidence of an intention as to which notice was given under Rule 12.2(a) or (b), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

(Added by order adopted April 22, 1974, effective December 1, 1975, amended by order adopted July 31, 1975, effective December 1, 1975, by order adopted April 28, 1983, effective August 1, 1983, by P.L. 98-473, Title II, § 404(a), approved October 12, 1984; by P.L. 98-596, § 11(a)(1), 11(a)(1), effective October 30, 1984, by P.L. 99-646, § 24, by order adopted April 29, 1985, effective August 1, 1985, by order effective November 10, 1986, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 29, 2002, effective December 1, 2002; and by order April 25, 2005, effective December 1, 2005.)

### **Rule 12.3. Notice of a Public-Authority Defense.**

(a) *Notice of the Defense and Disclosure of Witnesses.*

(1) *Notice in General.* If a defendant intends to assert a defense of actual or believed exercise of public authority on behalf of a law enforcement agency or federal intelligence agency at the time of the alleged offense, the defendant must so notify an attorney for the government in writing and must file a copy of the notice with the clerk within the

time provided for filing a pretrial motion, or at any later time the court sets. The notice filed with the clerk must be under seal if the notice identifies a federal intelligence agency as the source of public authority.

(2) *Contents of Notice.* The notice must contain the following information:

(A) the law enforcement agency or federal intelligence agency involved;

(B) the agency member on whose behalf the defendant claims to have acted; and

(C) the time during which the defendant claims to have acted with public authority.

(3) *Response to the Notice.* An attorney for the government must serve a written response on the defendant or the defendant's attorney within 14 days after receiving the defendant's notice, but no later than 21 days before trial. The response must admit or deny that the defendant exercised the public authority identified in the defendant's notice.

(4) *Disclosing Witnesses.*

(A) *Government's Request.* An attorney for the government may request in writing that the defendant disclose the name, address, and telephone number of each witness the defendant intends to rely on to establish a public-authority defense. An attorney for the government may serve the request when the government serves its response to the defendant's notice under Rule 12.3(a)(3), or later, but must serve the request no later than 21 days before trial.

(B) *Defendant's Response.* Within 14 days after receiving the government's request, the defendant must serve on an attorney for the government a written statement of the name, address, and telephone number of each witness.

(C) *Government's Reply.* Within 14 days after receiving the defendant's statement, an attorney for the government must serve on the defendant or the defendant's attorney a written statement of the name of each witness — and the address and telephone number of each witness other than a victim — that the government intends to rely on to oppose the defendant's public-authority defense.

(D) *Victim's Address and Telephone Number.* If the government intends to rely on a victim's testimony to oppose the defendant's public-authority defense and the defendant establishes a need for the victim's address and telephone number, the court may:

(i) order the government to provide the information in writing to the defendant or the defendant's attorney; or

(ii) fashion a reasonable procedure that allows for preparing the defense and also protects the victim's interests.

(5) *Additional Time.* The court may, for good cause, allow a party additional time to comply with this rule.

(b) *Continuing Duty to Disclose.*

(1) *In General.* Both an attorney for the government and the defendant must promptly disclose in writing to the other party the name of any additional witness — and the address, and telephone number of any additional witness other than a victim — if:

(A) the disclosing party learns of the witness before or during trial; and

(B) the witness should have been disclosed under Rule 12.3(a)(4) if the disclosing party had known of the witness earlier.

(2) *Address and Telephone Number of an Additional Victim-Witness.* The address and telephone number of an additional victim-witness must not be disclosed except as provided in Rule 12.3(a)(4)(D).

(c) *Failure to Comply.* If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the public-authority defense. This rule does not limit the defendant's right to testify.

(d) *Protective Procedures Unaffected.* This rule does not limit the court's authority to issue appropriate protective orders or to order that any filings be under seal.

(e) *Inadmissibility of Withdrawn Intention.* Evidence of an intention as to which notice was given under Rule 12.3(a), later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.



(Adopted in P.L.100-690, signed by president on November 18, 1988, and amended by order adopted April 29, 2002, effective December 1, 2002; amended by order adopted March 26, 2009, effective December 1, 2009; amended, effective December 1, 2010.)

### COMMENT

The times set in the former rule at 7, 10, or 20 days have been revised to 14 or 21 days. See the Committee Note to Rule 45(a). [12/1/09]

**Subdivisions (a) and (b).** The amendment implements the Crime Victims' Rights Act, which states that victims have the right to be reasonably protected from the accused, and to be treated with respect for the victim's dignity and privacy. *See* 18 U.S.C. § 3771(a)(1) & (8). The rule provides that a victim's address and telephone number should not automatically be provided to the defense when a public-authority defense is raised. If a defendant establishes a need for this information, the court has discretion to order its disclosure or to fashion an alternative procedure that provides the defendant with the information necessary to prepare a defense, but also protects the victim's interests.

In the case of victims who will testify concerning a public-authority claim, the same procedures and standards apply to both the prosecutor's initial disclosure and the prosecutor's continuing duty to disclose under subdivision (b). [12/1/10]

### Rule 12.4. Disclosure Statement.

#### (a) *Who Must File.*

(1) Nongovernmental Corporate Party. — Any nongovernmental corporate party to a proceeding in a district court must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(2) Organizational Victim. — If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Rule 12.4(a)(1) to the extent it can be obtained through due diligence.

#### (b) *Time for Filing; Supplemental Filing.* A party must:

- (1) file the Rule 12.4(a) statement upon the defendant's initial appearance; and
- (2) promptly file a supplemental statement upon any change in the information that the statement requires.

(Added by order adopted April 29, 2002, effective December 1, 2002.)

### Rule 13. Joint Trial of Separate Cases.

The court may order that separate cases be tried together as though brought in a single indictment or information if all offenses and all defendants could have been joined in a single indictment or information.

(Amended by order adopted April 29, 2002, effective December 1, 2002.)

### Rule 14. Relief from Prejudicial Joinder.

(a) *Relief.* If the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

(b) *Defendant's Statements.* Before ruling on a defendant's motion to sever, the court may order an attorney for the government to deliver to the court for in camera inspection any defendant's statement that the government intends to use as evidence.

(Amended by order adopted February 28, 1966, effective July 1, 1966, and by order adopted April 29, 2002, effective December 1, 2002.)



## Rule 15. Depositions.

### (a) *When Taken.*

(1) *In General.* A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(2) *Detained Material Witness.* A witness who is detained under 18 U.S.C. § 3144 may request to be deposed by filing a written motion and giving notice to the parties. The court may then order that the deposition be taken and may discharge the witness after the witness has signed under oath the deposition transcript.

### (b) *Notice.*

(1) *In General.* A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If requested by a party receiving the notice, the court may, for good cause, change the deposition's date or location.

(2) *To the Custodial Officer.* A party seeking to take the deposition must also notify the officer who has custody of the defendant of the scheduled date and location.

### (c) *Defendant's Presence.*

(1) *Defendant in Custody.* Except as authorized by Rule 15(c)(3), the officer who has custody of the defendant must produce the defendant at the deposition and keep the defendant in the witness's presence during the examination, unless the defendant:

(A) waives in writing the right to be present; or

(B) persists in disruptive conduct justifying exclusion after being warned by the court that disruptive conduct will result in the defendant's exclusion.

(2) *Defendant Not in Custody.* Except as authorized by Rule 15(c)(3), a defendant who is not in custody has the right upon request to be present at the deposition, subject to any conditions imposed by the court. If the government tenders the defendant's expenses as provided in Rule 15(d) but the defendant still fails to appear, the defendant — absent good cause — waives both the right to appear and any objection to the taking and use of the deposition based on that right.

(3) *Taking Depositions Outside the United States Without the Defendant's Presence.* The deposition of a witness who is outside the United States may be taken without the defendant's presence if the court makes case-specific findings of all the following:

(A) the witness's testimony could provide substantial proof of a material fact in a felony prosecution;

(B) there is a substantial likelihood that the witness's attendance at trial cannot be obtained;

(C) the witness's presence for a deposition in the United States cannot be obtained;

(D) the defendant cannot be present because:

(i) the country where the witness is located will not permit the defendant to attend the deposition;

(ii) for an in-custody defendant, secure transportation and continuing custody cannot be assured at the witness's location; or

(iii) for an out-of-custody defendant, no reasonable conditions will assure an appearance at the deposition or at trial or sentencing; and

(E) the defendant can meaningfully participate in the deposition through reasonable means.

(d) *Expenses.* If the deposition was requested by the government, the court may — or if the defendant is unable to bear the deposition expenses, the court must — order the government to pay:

(1) any reasonable travel and subsistence expenses of the defendant and the defendant's attorney to attend the deposition; and

(2) the costs of the deposition transcript.

(e) *Manner of Taking.* Unless these rules or a court order provides otherwise, a deposition must be taken and filed in the same manner as a deposition in a civil action, except that:

(1) A defendant may not be deposed without that defendant's consent.

(2) The scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial.

(3) The government must provide to the defendant or the defendant's attorney, for use at the deposition, any statement of the deponent in the government's possession to which the defendant would be entitled at trial.

(f) *Admissibility and Use as Evidence.* An order authorizing a deposition to be taken under this rule does not determine its admissibility. A party may use all or part of a deposition as provided by the Federal Rules of Evidence.

(g) *Objections.* A party objecting to deposition testimony or evidence must state the grounds for the objection during the deposition.

(h) *Depositions by Agreement Permitted.* The parties may by agreement take and use a deposition with the court's consent.

(Amended by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by P.L. 98-473, Title II, § 209(b), approved October 12, 1984, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 23, 2012, effective December 1, 2012.)

### COMMENT

**Subdivisions (c)(3) and (f).** This amendment provides a mechanism for taking depositions in cases in which important witnesses — government and defense witnesses both — live in, or have fled to, countries where they cannot be reached by the court's subpoena power. Although Rule 15 authorizes depositions of witnesses in certain circumstances, the rule to date has not addressed instances where an important witness is not in the United States, there is a substantial likelihood the witness's attendance at trial cannot be obtained, and it would not be possible to securely transport the defendant or a co-defendant to the witness's location for a deposition.

While a party invokes Rule 15 in order to preserve testimony for trial, the rule does not determine whether the resulting deposition will be admissible, in whole or in part. Subdivision (f) provides that in the case of all depositions, questions of admissibility of the evidence obtained are left to the courts to resolve on a case by case basis. Under Rule 15(f), the courts make this determination applying the Federal Rules of Evidence, which state that relevant evidence is admissible except as otherwise provided by the Constitution, statutes, the Rules of Evidence, and other rules prescribed by the Supreme Court. Fed. R. Evid. 402.

Rule 15(c) as amended imposes significant procedural limitations on taking certain depositions in criminal cases. The amended rule authorizes a deposition outside a defendant's physical presence only in very limited circumstances after the trial court makes case-specific findings. Amended Rule 15(c)(3) delineates these circumstances and the specific findings a trial court must make before permitting parties to depose a witness outside the defendant's presence. The party requesting the deposition shoulders the burden of proof — by a preponderance of the evidence — on the elements that must be shown. The amended rule recognizes the important witness confrontation principles and vital law enforcement and other public interests that are involved.

This amendment does not supersede the relevant provisions of 18 U.S.C. § 3509, authorizing depositions outside the defendant's physical presence in certain cases involving child victims and witnesses, or any other provision of law. [12/1/12]

### Rule 16. Discovery and Inspection.

(a) *Government's Disclosure.*

(1) *Information Subject to Disclosure.*



(A) *Defendant's Oral Statement.* Upon a defendant's request, the government must disclose to the defendant the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial.

(B) *Defendant's Written or Recorded Statement.* Upon a defendant's request, the government must disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:

- (i) any relevant written or recorded statement by the defendant if:
  - the statement is within the government's possession, custody, or control; and
  - the attorney for the government knows — or through due diligence could know — that the statement exists;
- (ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and
- (iii) the defendant's recorded testimony before a grand jury relating to the charged offense.

(C) *Organizational Defendant.* Upon a defendant's request, if the defendant is an organization, the government must disclose to the defendant any statement described in Rule 16(a)(1)(A) and (B) if the government contends that the person making the statement:

- (i) was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or
- (ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person's position as the defendant's director, officer, employee, or agent.

(D) *Defendant's Prior Record.* Upon a defendant's request, the government must furnish the defendant with a copy of the defendant's prior criminal record that is within the government's possession, custody, or control if the attorney for the government knows — or through due diligence could know — that the record exists.

(E) *Documents and Objects.* Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

(F) *Reports of Examinations and Tests.* Upon a defendant's request, the government must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

- (i) the item is within the government's possession, custody, or control;
- (ii) the attorney for the government knows — or through due diligence could know — that the item exists; and
- (iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.

(G) *Expert Witnesses.* At the defendant's request, the government must give to the defendant a written summary of any testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its case-in-chief at trial. If the government requests discovery under subdivision (b)(1)(C)(ii) and the defendant complies, the government must, at the defendant's request, give to the defendant a written summary of testimony that the government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial on the issue of the defendant's mental condition. The summary provided under this subpara-



graph must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

(2) *Information Not Subject to Disclosure.* Except as Rule 16(a)(1) provides otherwise, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in 18 U.S.C. § 3500.

(3) *Grand Jury Transcripts.* This rule does not apply to the discovery or inspection of a grand jury's recorded proceedings, except as provided in Rules 6, 12(h), 16(a)(1), and 26.2.

(b) *Defendant's Disclosure.*

(1) *Information Subject to Disclosure.*

(A) *Documents and Objects.* If a defendant requests disclosure under Rule 16(a)(1)(E) and the government complies, then the defendant must permit the government, upon request, to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:

- (i) the item is within the defendant's possession, custody, or control; and
- (ii) the defendant intends to use the item in the defendant's case-in-chief at trial.

(B) *Reports of Examinations and Tests.* If a defendant requests disclosure under Rule 16(a)(1)(F) and the government complies, the defendant must permit the government, upon request, to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

- (i) the item is within the defendant's possession, custody, or control; and
- (ii) the defendant intends to use the item in the defendant's case-in-chief at trial, or intends to call the witness who prepared the report and the report relates to the witness's testimony.

(C) *Expert Witnesses.* The defendant must, at the government's request, give to the government a written summary of any testimony that the defendant intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence as evidence at trial, if—

- (i) the defendant requests disclosure under subdivision (a)(1)(G) and the government complies; or
- (ii) the defendant has given notice under Rule 12.2(b) of an intent to present expert testimony on the defendant's mental condition.

This summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

(2) *Information Not Subject to Disclosure.* Except for scientific or medical reports, Rule 16(b)(1) does not authorize discovery or inspection of:

- (A) reports, memoranda, or other documents made by the defendant, or the defendant's attorney or agent, during the case's investigation or defense; or
- (B) a statement made to the defendant, or the defendant's attorney or agent, by:
  - (i) the defendant;
  - (ii) a government or defense witness; or
  - (iii) a prospective government or defense witness.

(c) *Continuing Duty to Disclose.* A party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the court if:

- (1) the evidence or material is subject to discovery or inspection under this rule; and
- (2) the other party previously requested, or the court ordered, its production.

(d) *Regulating Discovery.*

(1) *Protective and Modifying Orders.* At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The court may permit a party to show good cause by a written statement that the court will inspect ex parte. If relief is granted, the court must preserve the entire text of the party's statement under seal.

(2) *Failure to Comply.* If a party fails to comply with this rule, the court may:

- (A) order that party to permit the discovery or inspection; specify its time, place, and manner; and prescribe other just terms and conditions;
- (B) grant a continuance;
- (C) prohibit that party from introducing the undisclosed evidence; or
- (D) enter any other order that is just under the circumstances.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by order adopted December 12, 1975, by order adopted April 28, 1983, effective August 1, 1983, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 1994, effective December 1, 1994, by order adopted April 11, 1997, effective December 1, 1997, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted November 2, 2002, effective December 1, 2002.)

### Rule 17. Subpoena.

(a) *Content.* A subpoena must state the court's name and the title of the proceeding, include the seal of the court, and command the witness to attend and testify at the time and place the subpoena specifies. The clerk must issue a blank subpoena — signed and sealed — to the party requesting it, and that party must fill in the blanks before the subpoena is served.

(b) *Defendant Unable to Pay.* Upon a defendant's ex parte application, the court must order that a subpoena be issued for a named witness if the defendant shows an inability to pay the witness's fees and the necessity of the witness's presence for an adequate defense. If the court orders a subpoena to be issued, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.

(c) *Producing Documents and Objects.*

(1) *In General.* A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) *Quashing or Modifying the Subpoena.* On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) *Subpoena for Personal or Confidential Information About a Victim.* After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) *Service.* A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

(e) *Place of Service.*

(1) *In the United States.* A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) *In a Foreign Country.* If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(f) *Issuing a Deposition Subpoena.*

(1) *Issuance.* A court order to take a deposition authorizes the clerk in the district where the deposition is to be taken to issue a subpoena for any witness named or described in the order.



(2) *Place.* After considering the convenience of the witness and the parties, the court may order — and the subpoena may require — the witness to appear anywhere the court designates.

(g) *Contempt.* The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

(h) *Information Not Subject to a Subpoena.* No party may subpoena a statement of a witness or of a prospective witness under this rule. Rule 26.2 governs the production of the statement.

(Amended by order adopted December 27, 1948, effective October 20, 1949, by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by order adopted April 30, 1979, effective December 1, 1980, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 2002, effective December 1, 2002, and by order effective December 1, 2008.)

### **Rule 17.1. Pretrial Conference.**

On its own, or on a party's motion, the court may hold one or more pre-trial conferences to promote a fair and expeditious trial. When a conference ends, the court must prepare and file a memorandum of any matters agreed to during the conference. The government may not use any statement made during the conference by the defendant or the defendant's attorney unless it is in writing and is signed by the defendant and the defendant's attorney.

(Added by order adopted February 28, 1966, effective July 1, 1966, and amended by order adopted March 9, 1987, effective August 1, 1987, and by order adopted April 29, 2002, effective December 1, 2002.)

## **TITLE V. VENUE**

### **Rule 18. Place of Prosecution and Trial.**

Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 30, 1979, effective August 1, 1979, by order adopted April 29, 2002, effective December 1, 2002, and by order effective December 1, 2008.)

### **Rule 19. [Reserved.]**

### **Rule 20. Transfer for Plea and Sentence.**

(a) *Consent to Transfer.* A prosecution may be transferred from the district where the indictment or information is pending, or from which a warrant on a complaint has been issued, to the district where the defendant is arrested, held, or present if:

(1) the defendant states in writing a wish to plead guilty or nolo contendere and to waive trial in the district where the indictment, information, or complaint is pending, consents in writing to the court's disposing of the case in the transferee district, and files the statement in the transferee district; and

(2) the United States attorneys in both districts approve the transfer in writing.



(b) *Clerk's Duties.* After receiving the defendant's statement and the required approvals, the clerk where the indictment, information, or complaint is pending must send the file, or a certified copy, to the clerk in the transferee district.

(c) *Effect of a Not Guilty Plea.* If the defendant pleads not guilty after the case has been transferred under Rule 20(a), the clerk must return the papers to the court where the prosecution began, and that court must restore the proceeding to its docket. The defendant's statement that the defendant wished to plead guilty or nolo contendere is not, in any civil or criminal proceeding, admissible against the defendant.

(d) *Juveniles.*

(1) *Consent to Transfer.* A juvenile, as defined in 18 U.S.C. § 5031, may be proceeded against as a juvenile delinquent in the district where the juvenile is arrested, held, or present if:

(A) the alleged offense that occurred in the other district is not punishable by death or life imprisonment;

(B) an attorney has advised the juvenile;

(C) the court has informed the juvenile of the juvenile's rights — including the right to be returned to the district where the offense allegedly occurred — and the consequences of waiving those rights;

(D) the juvenile, after receiving the court's information about rights, consents in writing to be proceeded against in the transferee district, and files the consent in the transferee district;

(E) the United States attorneys for both districts approve the transfer in writing; and

(F) the transferee court approves the transfer.

(2) *Clerk's Duties.* After receiving the juvenile's written consent and the required approvals, the clerk where the indictment, information, or complaint is pending or where the alleged offense occurred must send the file, or a certified copy, to the clerk in the transferee district.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by order adopted April 28, 1982, effective August 1, 1982, by order adopted March 9, 1987, effective August 1, 1987, and by order adopted April 29, 2002, effective December 1, 2002.)

## Rule 21. Transfer for Trial.

(a) *For Prejudice.* Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

(b) *For Convenience.* Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties, any victim, and the witnesses, and in the interest of justice.

(c) *Proceedings on Transfer.* When the court orders a transfer, the clerk must send to the transferee district the file, or a certified copy, and any bail taken. The prosecution will then continue in the transferee district.

(d) *Time to File a Motion to Transfer.* A motion to transfer may be made at or before arraignment or at any other time the court or these rules prescribe.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 9, 1987, effective August 1, 1987, and by order adopted April 29, 2002, effective December 1, 2002; amended, effective December 1, 2010.)

## COMMENT

**Subdivision (b).** This amendment requires the court to consider the convenience of victims — as well as the convenience of the parties and witnesses and the interests of

justice — in determining whether to transfer all or part of the proceeding to another district for trial. The Committee recognizes that the court has substantial discretion to balance any competing interests. [12/1/10]

## **Rule 22. [Transferred.]**

# **TITLE VI. TRIAL**

## **Rule 23. Jury or Nonjury Trial.**

- (a) *Jury Trial.* If the defendant is entitled to a jury trial, the trial must be by jury unless:
  - (1) the defendant waives a jury trial in writing;
  - (2) the government consents; and
  - (3) the court approves.
- (b) *Jury Size.*
  - (1) *In General.* A jury consists of 12 persons unless this rule provides otherwise.
  - (2) *Stipulation for a Smaller Jury.* At any time before the verdict, the parties may, with the court's approval, stipulate in writing that:
    - (A) the jury may consist of fewer than 12 persons; or
    - (B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for good cause after the trial begins.
  - (3) *Court Order for a Jury of 11.* After the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if the court finds good cause to excuse a juror.
- (c) *Nonjury Trial.* In a case tried without a jury, the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted July 30, 1977, effective October 1, 1977, by order adopted April 28, 1983, effective August 1, 1983, and by order adopted April 29, 2002, effective December 1, 2002.)

## **Rule 24. Trial Jurors.**

- (a) *Examination.*
  - (1) *In General.* The court may examine prospective jurors or may permit the attorneys for the parties to do so.
  - (2) *Court Examination.* If the court examines the jurors, it must permit the attorneys for the parties to:
    - (A) ask further questions that the court considers proper; or
    - (B) submit further questions that the court may ask if it considers them proper.
- (b) *Peremptory Challenges.* Each side is entitled to the number of peremptory challenges to prospective jurors specified below. The court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly.
  - (1) *Capital Case.* Each side has 20 peremptory challenges when the government seeks the death penalty.
  - (2) *Other Felony Case.* The government has 6 peremptory challenges and the defendant or defendants jointly have 10 peremptory challenges when the defendant is charged with a crime punishable by imprisonment of more than one year.
  - (3) *Misdemeanor Case.* Each side has 3 peremptory challenges when the defendant is charged with a crime punishable by fine, imprisonment of one year or less, or both.
- (c) *Alternate Jurors.*
  - (1) *In General.* The court may impanel up to 6 alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.
  - (2) *Procedure.*

(A) Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror.

(B) Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(3) *Retaining Alternate Jurors.* The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(4) *Peremptory Challenges.* Each side is entitled to the number of additional peremptory challenges to prospective alternate jurors specified below. These additional challenges may be used only to remove alternate jurors.

(A) *One or Two Alternates.* One additional peremptory challenge is permitted when one or two alternates are impaneled.

(B) *Three or Four Alternates.* Two additional peremptory challenges are permitted when three or four alternates are impaneled.

(C) *Five or Six Alternates.* Three additional peremptory challenges are permitted when five or six alternates are impaneled.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 26, 1999, effective December 1, 1999, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 25. Judge's Disability.**

(a) *During Trial.* Any judge regularly sitting in or assigned to the court may complete a jury trial if:

(1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and

(2) the judge completing the trial certifies familiarity with the trial record.

(b) *After a Verdict or Finding of Guilty.*

(1) *In General.* After a verdict or finding of guilty, any judge regularly sitting in or assigned to a court may complete the court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability.

(2) *Granting a New Trial.* The successor judge may grant a new trial if satisfied that:

(A) a judge other than the one who presided at the trial cannot perform the post-trial duties; or

(B) a new trial is necessary for some other reason.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 9, 1987, effective August 1, 1987, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 26. Taking Testimony.**

In every trial the testimony of witnesses must be taken in open court, unless otherwise provided by a statute or by rules adopted under 28 U.S.C. §§ 2072-2077.

(Amended by order adopted November 20, 1972, effective July 1, 1975, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 26.1. Foreign Law Determination.**

A party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source — including testimony — without regard to the Federal Rules of Evidence.



(Added by order adopted February 28, 1966, effective July 1, 1966, amended by order adopted November 20, 1972, effective July 1, 1975, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 26.2. Producing a Witness's Statement.**

(a) *Motion to Produce.* After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the government or the defendant and the defendant's attorney to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony.

(b) *Producing the Entire Statement.* If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.

(c) *Producing a Redacted Statement.* If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.

(d) *Recess to Examine a Statement.* The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.

(e) *Sanction for Failure to Produce or Deliver a Statement.* If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.

(f) *"Statement" Defined.* As used in this rule, a witness's "statement" means:

(1) a written statement that the witness makes and signs, or otherwise adopts or approves;

(2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or

(3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.

(g) *Scope.* This rule applies at trial, at a suppression hearing under Rule 12, and to the extent specified in the following rules:

(1) Rule 5.1(h) (preliminary hearing);

(2) Rule 32(i)(2) (sentencing);

(3) Rule 32.1(e) (hearing to revoke or modify probation or supervised release);

(4) Rule 46(j) (detention hearing); and

(5) Rule 8 of the Rules Governing Proceedings under 28 U.S.C. § 2255.

(Amended by order adopted April 30, 1979, effective December 1, 1980, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 24, 1998, effective December 1, 1998, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 26.3. Mistrial.**

Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.

(Added by order adopted April 22, 1993, effective December 1, 1993, amended by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 27. Proving an Official Record.**

A party may prove an official record, an entry in such a record, or the lack of a record or entry in the same manner as in a civil action.

(Amended by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 28. Interpreters.**

The court may select, appoint, and set the reasonable compensation for an interpreter. The compensation must be paid from funds provided by law or by the government, as the court may direct.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted November 20, 1972, effective July 1, 1975, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 29. Motion for a Judgment of Acquittal.**

(a) *Before Submission to the Jury.* After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) *Reserving Decision.* The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) *After Jury Verdict or Discharge.*

(1) *Time for a Motion.* A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

(2) *Ruling on the Motion.* If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) *No Prior Motion Required.* A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

(d) *Conditional Ruling on a Motion for a New Trial.*

(1) *Motion for a New Trial.* If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

(2) *Finality.* The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

(3) *Appeal.*

(A) *Grant of a Motion for a New Trial.* If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

(B) *Denial of a Motion for a New Trial.* If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by P.L. 99-646, § 54, adopted November 10, 1986, effective December 10, 1986, by order adopted April 29, 1994, effective December 1, 1994, by order adopted April 29, 2002, effective December 1, 2002; and by order April 25, 2005, effective December 1, 2005; amended by order adopted March 26, 2009, effective December 1, 2009.)



### COMMENT

Former Rules 29, 33, and 34 adopted 7-day periods for their respective motions. This period has been expanded to 14 days. Experience has proved that in many cases it is not possible to prepare a satisfactory motion in 7 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. This led to frequent requests for continuances, and the filing of bare bones motions that required later supplementation. The 14-day period — including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a) — sets a more realistic time for the filing of these motions. [12/1/09]

#### Rule 29.1. Closing Argument.

Closing arguments proceed in the following order:

- (a) the government argues;
- (b) the defense argues; and
- (c) the government rebuts.

(Added by order adopted April 22, 1974, effective December 1, 1975, and amended by order adopted April 29, 2002, effective December 1, 2002.)

#### Rule 30. Jury Instructions.

(a) *In General.* Any party may request in writing that the court instruct the jury on the law as specified in the request. The request must be made at the close of the evidence or at any earlier time that the court reasonably sets. When the request is made, the requesting party must furnish a copy to every other party.

(b) *Ruling on a Request.* The court must inform the parties before closing arguments how it intends to rule on the requested instructions.

(c) *Time for Giving Instructions.* The court may instruct the jury before or after the arguments are completed, or at both times.

(d) *Objections to Instructions.* A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence. Failure to object in accordance with this rule precludes appellate review, except as permitted under Rule 52(b).

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 25, 1988, effective August 1, 1988, and by order adopted April 29, 2002, effective December 1, 2002.)

#### Rule 31. Jury Verdict.

(a) *Return.* The jury must return its verdict to a judge in open court. The verdict must be unanimous.

(b) *Partial Verdicts, Mistrial, and Retrial.*

(1) *Multiple Defendants.* If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant about whom it has agreed.

(2) *Multiple Counts.* If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts on which it has agreed.

(3) *Mistrial and Retrial.* If the jury cannot agree on a verdict on one or more counts, the court may declare a mistrial on those counts. The government may retry any defendant on any count on which the jury could not agree.

(c) *Lesser Offense or Attempt.* A defendant may be found guilty of any of the following:

- (1) an offense necessarily included in the offense charged;
- (2) an attempt to commit the offense charged; or



(3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.

(d) *Jury Poll*. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.

(Amended by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 24, 1998, effective December 1, 1998, by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 29, 2002, effective December 1, 2002.)

## TITLE VII. POST-CONVICTION PROCEDURES

### Rule 32. Sentencing and Judgment.

(a) [Reserved.]

(b) *Time of Sentencing*.

(1) *In General*. The court must impose sentence without unnecessary delay.

(2) *Changing Time Limits*. The court may, for good cause, change any time limits prescribed in this rule.

(c) *Presentence Investigation*.

(1) *Required Investigation*.

(A) *In General*. The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless:

(i) 18 U.S.C. § 3593(c) or another statute requires otherwise; or

(ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its finding on the record.

(B) *Restitution*. If the law permits restitution, the probation officer must conduct an investigation and submit a report that contains sufficient information for the court to order restitution.

(2) *Interviewing the Defendant*. The probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's attorney notice and a reasonable opportunity to attend the interview.

(d) *Presentence Report*.

(1) *Applying the Advisory Sentencing Guidelines*. The presentence report must:

(A) identify all applicable guidelines and policy statements of the Sentencing Commission;

(B) calculate the defendant's offense level and criminal history category;

(C) state the resulting sentencing range and kinds of sentences available;

(D) identify any factor relevant to:

(i) the appropriate kind of sentence, or

(ii) the appropriate sentence within the applicable sentencing range; and

(E) identify any basis for departing from the applicable sentencing range.

(2) *Additional Information*. The presentence report must also contain the following:

(A) the defendant's history and characteristics, including:

(i) any prior criminal record;

(ii) the defendant's financial condition; and

(iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(B) information that assesses any financial, social, psychological, and medical impact on any victim;

(C) when appropriate, the nature and extent of nonprison programs and resources available to the defendant;

(D) when the law provides for restitution, information sufficient for a restitution order;

(E) if the court orders a study under 18 U.S.C. § 3552(b), any resulting report and recommendation;

(F) a statement of whether the government seeks forfeiture under Rule 32.2 and any other law; and

(G) any other information that the court requires, including information relevant to the factors under 18 U.S.C. § 3553(a).

(3) *Exclusions.* The presentence report must exclude the following:

(A) any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;

(B) any sources of information obtained upon a promise of confidentiality; and

(C) any other information that, if disclosed, might result in physical or other harm to the defendant or others.

(e) *Disclosing the Report and Recommendation.*

(1) *Time to Disclose.* Unless the defendant has consented in writing, the probation officer must not submit a presentence report to the court or disclose its contents to anyone until the defendant has pleaded guilty or nolo contendere, or has been found guilty.

(2) *Minimum Required Notice.* The probation officer must give the presentence report to the defendant, the defendant's attorney, and an attorney for the government at least 35 days before sentencing unless the defendant waives this minimum period.

(3) *Sentence Recommendation.* By local rule or by order in a case, the court may direct the probation officer not to disclose to anyone other than the court the officer's recommendation on the sentence.

(f) *Objecting to the Report.*

(1) *Time to Object.* Within 14 days after receiving the presentence report, the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report.

(2) *Serving Objections.* An objecting party must provide a copy of its objections to the opposing party and to the probation officer.

(3) *Action on Objections.* After receiving objections, the probation officer may meet with the parties to discuss the objections. The probation officer may then investigate further and revise the presentence report as appropriate.

(g) *Submitting the Report.* At least 7 days before sentencing, the probation officer must submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the probation officer's comments on them.

(h) *Notice of Possible Departure from Sentencing Guidelines.* Before the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure.

(i) *Sentencing.*

(1) *In General.* At sentencing, the court:

(A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report;

(B) must give to the defendant and an attorney for the government a written summary of — or summarize in camera — any information excluded from the presentence report under Rule 32(d)(3) on which the court will rely in sentencing, and give them a reasonable opportunity to comment on that information;

(C) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence; and

(D) may, for good cause, allow a party to make a new objection at any time before sentence is imposed.

(2) *Introducing Evidence; Producing a Statement.* The court may permit the parties to introduce evidence on the objections. If a witness testifies at sentencing, Rule 26.2(a)-(d)



and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

(3) *Court Determinations.* At sentencing, the court:

(A) may accept any undisputed portion of the presentence report as a finding of fact;

(B) must — for any disputed portion of the presentence report or other controverted matter — rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and

(C) must append a copy of the court's determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

(4) *Opportunity to Speak.*

(A) *By a Party.* Before imposing sentence, the court must:

(i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) *By a Victim.* Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard.

(C) *In Camera Proceedings.* Upon a party's motion and for good cause, the court may hear in camera any statement made under Rule 32(i)(4).

(j) *Defendant's Right to Appeal.*

(1) *Advice of a Right to Appeal.*

(A) *Appealing a Conviction.* If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

(B) *Appealing a Sentence.* After sentencing — regardless of the defendant's plea — the court must advise the defendant of any right to appeal the sentence.

(C) *Appeal Costs.* The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in forma pauperis.

(2) *Clerk's Filing of Notice.* If the defendant so requests, the clerk must immediately prepare and file a notice of appeal on the defendant's behalf.

(k) *Judgment.*

(1) *In General.* In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so order. The judge must sign the judgment, and the clerk must enter it.

(2) *Criminal Forfeiture.* Forfeiture procedures are governed by Rule 32.2.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by order adopted April 30, 1979, effective August 1, 1979, and December 1, 1980, by order adopted October 12, 1982, by order adopted April 28, 1983, effective August 1, 1983, by order adopted October 12, 1984, effective November 1, 1987, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 25, 1989, effective December 1, 1989, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 1994, effective December 1, 1994, by P.L.103-222, approved September 13, 1994, effective December 1, 1994, by order adopted April 23, 1996, effective December 1, 1996, by order adopted April 24, 1996, by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 29, 2002, effective December 1, 2002, by order adopted April 30, 2007, effective December 1, 2007, by order effective December 1, 2008; amended by order adopted March 26, 2009,



effective December 1, 2009, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

**Subdivision (d)(2)(G).** Rule 32.2(a) requires that the indictment or information provide notice to the defendant of the government's intent to seek forfeiture as part of the sentence. The amendment provides that the same notice be provided as part of the presentence report to the court. This will ensure timely consideration of the issues concerning forfeiture as part of the sentencing process. [12/1/09]

**Subdivision (d)(2).** This technical and conforming amendment reorders two subparagraphs describing the information that may be included in the presentence report so that the provision authorizing the inclusion of any other information the court requires appears at the end of the paragraph. It also rephrases renumbered subdivision (d)(2)(F) for stylistic purposes.

### Rule 32.1. Revoking or Modifying Probation or Supervised Release.

#### (a) *Initial Appearance.*

(1) *Person in Custody.* A person held in custody for violating probation or supervised release must be taken without unnecessary delay before a magistrate judge.

(A) If the person is held in custody in the district where an alleged violation occurred, the initial appearance must be in that district.

(B) If the person is held in custody in a district other than where an alleged violation occurred, the initial appearance must be in that district, or in an adjacent district if the appearance can occur more promptly there.

(2) *Upon a Summons.* When a person appears in response to a summons for violating probation or supervised release, a magistrate judge must proceed under this rule.

(3) *Advice.* The judge must inform the person of the following:

(A) the alleged violation of probation or supervised release;

(B) the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

(C) the person's right, if held in custody, to a preliminary hearing under Rule 32.1(b)(1).

(4) *Appearance in the District With Jurisdiction.* If the person is arrested or appears in the district that has jurisdiction to conduct a revocation hearing — either originally or by transfer of jurisdiction — the court must proceed under Rule 32.1(b)-(e).

(5) *Appearance in a District Lacking Jurisdiction.* If the person is arrested or appears in a district that does not have jurisdiction to conduct a revocation hearing, the magistrate judge must:

(A) if the alleged violation occurred in the district of arrest, conduct a preliminary hearing under Rule 32.1(b) and either:

(i) transfer the person to the district that has jurisdiction, if the judge finds probable cause to believe that a violation occurred; or

(ii) dismiss the proceedings and so notify the court that has jurisdiction, if the judge finds no probable cause to believe that a violation occurred; or

(B) if the alleged violation did not occur in the district of arrest, transfer the person to the district that has jurisdiction if:

(i) the government produces certified copies of the judgment, warrant, and warrant application, or produces copies of those certified documents by reliable electronic means; and

(ii) the judge finds that the person is the same person named in the warrant.

(6) *Release or Detention.* The magistrate judge may release or detain the person under 18 U.S.C. § 3143(a)(1) pending further proceedings. The burden of establishing by clear and convincing evidence that the person will not flee or pose a danger to any other person or to the community rests with the person.

#### (b) *Revocation.*

(1) *Preliminary Hearing.*

(A) *In General.* If a person is in custody for violating a condition of probation or supervised release, a magistrate judge must promptly conduct a hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing.

(B) *Requirements.* The hearing must be recorded by a court reporter or by a suitable recording device. The judge must give the person:

(i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel;

(ii) an opportunity to appear at the hearing and present evidence; and

(iii) upon request, an opportunity to question any adverse witness, unless the judge determines that the interest of justice does not require the witness to appear.

(C) *Referral.* If the judge finds probable cause, the judge must conduct a revocation hearing. If the judge does not find probable cause, the judge must dismiss the proceeding.

(2) *Revocation Hearing.* Unless waived by the person, the court must hold the revocation hearing within a reasonable time in the district having jurisdiction. The person is entitled to:

(A) written notice of the alleged violation;

(B) disclosure of the evidence against the person;

(C) an opportunity to appear, present evidence, and question any adverse witness unless the court determines that the interest of justice does not require the witness to appear;

(D) notice of the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; and

(E) an opportunity to make a statement and present any information in mitigation.

(c) *Modification.*

(1) *In General.* Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.

(2) *Exceptions.* A hearing is not required if:

(A) the person waives the hearing; or

(B) the relief sought is favorable to the person and does not extend the term of probation or of supervised release; and

(C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

(d) *Disposition of the Case.* The court's disposition of the case is governed by 18 U.S.C. § 3563 and § 3565 (probation) and § 3583 (supervised release).

(e) *Producing a Statement.* Rule 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

(Amended by order adopted April 30, 1979, effective December 1, 1980, by P.L. 99-646, § 12(b), (c), adopted November 10, 1986, effective December 10, 1986, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 25, 1989, effective December 1, 1989, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 2002, effective December 1, 2002; by order April 25, 2005, effective December 1, 2005; and by order adopted April 12, 2006, effective December 1, 2006; amended, effective December 1, 2010.)

### COMMENT

**Subdivision (a)(6).** This amendment is designed to end confusion regarding the applicability of 18 U.S.C. § 3143(a) to release or detention decisions involving persons on probation or supervised release, and to clarify the burden of proof in such proceedings.



Confusion regarding the applicability of § 3143(a) arose because several subsections of the statute are ill suited to proceedings involving the revocation of probation or supervised release. *See United States v. Mincey*, 482 F. Supp. 2d 161 (D. Mass. 2007). The amendment makes clear that only subsection 3143(a)(1) is applicable in this context.

The current rule provides that the person seeking release must bear the burden of establishing that he or she will not flee or pose a danger but does not specify the standard of proof that must be met. The amendment incorporates into the rule the standard of clear and convincing evidence. [12/1/10]

### Rule 32.2. Criminal Forfeiture.

(a) *Notice to the Defendant.* A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute. The notice should not be designated as a count of the indictment or information. The indictment or information need not identify the property subject to forfeiture or specify the amount of any forfeiture money judgment that the government seeks.

(b) *Entering a Preliminary Order of Forfeiture.*

(1) *Forfeiture Phase of the Trial.*

(A) *Forfeiture Determinations.* As soon as practical after a verdict or finding of guilty, or after a plea of guilty or nolo contendere is accepted, on any count in an indictment or information regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture under the applicable statute. If the government seeks forfeiture of specific property, the court must determine whether the government has established the requisite nexus between the property and the offense. If the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay.

(B) *Evidence and Hearing.* The court's determination may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable. If the forfeiture is contested, on either party's request the court must conduct a hearing after the verdict or finding of guilty.

(2) *Preliminary Order.*

(A) *Contents of a Specific Order.* If the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria. The court must enter the order without regard to any third party's interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

(B) *Timing.* Unless doing so is impractical, the court must enter the preliminary order sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final as to the defendant under Rule 32.2(b)(4).

(C) *General Order.* If, before sentencing, the court cannot identify all the specific property subject to forfeiture or calculate the total amount of the money judgment, the court may enter a forfeiture order that:

(i) lists any identified property;

(ii) describes other property in general terms; and

(iii) states that the order will be amended under Rule 32.2(e)(1) when additional specific property is identified or the amount of the money judgment has been calculated.

(3) *Seizing Property.* The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture; to conduct any discovery the court considers proper in identifying, locating, or disposing of



the property; and to commence proceedings that comply with any statutes governing third-party rights. The court may include in the order of forfeiture conditions reasonably necessary to preserve the property's value pending any appeal.

(4) *Sentence and Judgment.*

(A) *When Final.* At sentencing — or at any time before sentencing if the defendant consents — the preliminary forfeiture order becomes final as to the defendant. If the order directs the defendant to forfeit specific property, it remains preliminary as to third parties until the ancillary proceeding is concluded under Rule 32.2(c).

(B) *Notice and Inclusion in the Judgment.* The court must include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The court must also include the forfeiture order, directly or by reference, in the judgment, but the court's failure to do so may be corrected at any time under Rule 36.

(C) *Time to Appeal.* The time for the defendant or the government to file an appeal from the forfeiture order, or from the court's failure to enter an order, begins to run when judgment is entered. If the court later amends or declines to amend a forfeiture order to include additional property under Rule 32.2(e), the defendant or the government may file an appeal regarding that property under Federal Rule of Appellate Procedure 4(b). The time for that appeal runs from the date when the order granting or denying the amendment becomes final.

(5) *Jury Determination.*

(A) *Retaining the Jury.* In any case tried before a jury, if the indictment or information states that the government is seeking forfeiture, the court must determine before the jury begins deliberating whether either party requests that the jury be retained to determine the forfeitability of specific property if it returns a guilty verdict.

(B) *Special Verdict Form.* If a party timely requests to have the jury determine forfeiture, the government must submit a proposed Special Verdict Form listing each property subject to forfeiture and asking the jury to determine whether the government has established the requisite nexus between the property and the offense committed by the defendant.

(6) *Notice of the Forfeiture Order.*

(A) *Publishing and Sending Notice.* If the court orders the forfeiture of specific property, the government must publish notice of the order and send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

(B) *Content of the Notice.* The notice must describe the forfeited property, state the times under the applicable statute when a petition contesting the forfeiture must be filed, and state the name and contact information for the government attorney to be served with the petition.

(C) *Means of Publication; Exceptions to Publication Requirement.* Publication must take place as described in Supplemental Rule G(4)(a)(iii) of the Federal Rules of Civil Procedure, and may be by any means described in Supplemental Rule G(4)(a)(iv). Publication is unnecessary if any exception in Supplemental Rule G(4)(a)(i) applies.

(D) *Means of Sending the Notice.* The notice may be sent in accordance with Supplemental Rules G(4)(b)(iii)-(v) of the Federal Rules of Civil Procedure.

(7) *Interlocutory Sale.* At any time before entry of a final forfeiture order, the court, in accordance with Supplemental Rule G(7) of the Federal Rules of Civil Procedure, may order the interlocutory sale of property alleged to be forfeitable.

(c) *Ancillary Proceeding; Entering a Final Order of Forfeiture.*

(1) *In General.* If, as prescribed by statute, a third party files a petition asserting an interest in the property to be forfeited, the court must conduct an ancillary proceeding, but no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment.

(A) In the ancillary proceeding, the court may, on motion, dismiss the petition for lack of standing, for failure to state a claim, or for any other lawful reason. For purposes of the motion, the facts set forth in the petition are assumed to be true.

(B) After disposing of any motion filed under Rule 32.2(c)(1)(A) and before conducting a hearing on the petition, the court may permit the parties to conduct discovery in accordance with the Federal Rules of Civil Procedure if the court determines that discovery is necessary or desirable to resolve factual issues. When discovery ends, a party may move for summary judgment under Federal Rule of Civil Procedure 56.

(2) *Entering a Final Order.* When the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights. If no third party files a timely petition, the preliminary order becomes the final order of forfeiture if the court finds that the defendant (or any combination of defendants convicted in the case) had an interest in the property that is forfeitable under the applicable statute. The defendant may not object to the entry of the final order on the ground that the property belongs, in whole or in part, to a codefendant or third party; nor may a third party object to the final order on the ground that the third party had an interest in the property.

(3) *Multiple Petitions.* If multiple third-party petitions are filed in the same case, an order dismissing or granting one petition is not appealable until rulings are made on all the petitions, unless the court determines that there is no just reason for delay.

(4) *Ancillary Proceeding Not Part of Sentencing.* An ancillary proceeding is not part of sentencing.

(d) *Stay Pending Appeal.* If a defendant appeals from a conviction or an order of forfeiture, the court may stay the order of forfeiture on terms appropriate to ensure that the property remains available pending appellate review. A stay does not delay the ancillary proceeding or the determination of a third party's rights or interests. If the court rules in favor of any third party while an appeal is pending, the court may amend the order of forfeiture but must not transfer any property interest to a third party until the decision on appeal becomes final, unless the defendant consents in writing or on the record.

(e) *Subsequently Located Property; Substitute Property.*

(1) *In General.* On the government's motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that:

(A) is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or

(B) is substitute property that qualifies for forfeiture under an applicable statute.

(2) *Procedure.* If the government shows that the property is subject to forfeiture under Rule 32.2(e)(1), the court must:

(A) enter an order forfeiting that property, or amend an existing preliminary or final order to include it; and

(B) if a third party files a petition claiming an interest in the property, conduct an ancillary proceeding under Rule 32.2(c).

(3) *Jury Trial Limited.* There is no right to a jury trial under Rule 32.2(e).

(Adopted April 17, 2000, effective December 1, 2000, amended by order adopted April 29, 2002, effective December 1, 2002; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

**Subdivision (a).** The amendment responds to some uncertainty regarding the form of the required notice that the government will seek forfeiture as part of the sentence, making it clear that the notice should not be designated as a separate count in an indictment or information. The amendment also makes it clear that the indictment or information need only provide general notice that the government is seeking forfeiture, without identifying the specific property being sought. This is consistent with the 2000 Committee Note, as well as many lower court decisions.

Although forfeitures are not charged as counts, the federal judiciary's Case Management and Electronic Case Files system should note that forfeiture has been alleged so as to assist the parties and the court in tracking the subsequent status of forfeiture allegations.



The court may direct the government to file a bill of particulars to inform the defendant of the identity of the property that the government is seeking to forfeit or the amount of any money judgment sought if necessary to enable the defendant to prepare a defense or to avoid unfair surprise. *See, e.g., United States v. Moffitt, Zwerdling, & Kemler, P. C.*, 83 F.3d 660, 665 (4th Cir. 1996) (holding that the government need not list each asset subject to forfeiture in the indictment because notice can be provided in a bill of particulars); *United States v. Vasquez-Ruiz*, 136 F. Supp. 2d 941, 944 (N.D. Ill. 2001) (directing the government to identify in a bill of particulars, at least 30 days before trial, the specific items of property, including substitute assets, that it claims are subject to forfeiture); *United States v. Best*, 657 F. Supp. 1179, 1182 (N.D. Ill. 1987) (directing the government to provide a bill of particulars apprising the defendants as to the time periods during which they obtained the specified classes of property through their alleged racketeering activity and the interest in each of these properties that was allegedly obtained unlawfully). *See also United States v. Columbo*, 2006 WL 2012511 \* 5 & n.13 (S.D. N.Y. 2006) (denying motion for bill of particulars and noting that government proposed sending letter detailing basis for forfeiture allegations).

**Subdivision (b)(1).** Rule 32.2(b)(1) sets forth the procedure for determining if property is subject to forfeiture. Subparagraph (A) is carried forward from the current Rule without change.

Subparagraph (B) clarifies that the parties may submit additional evidence relating to the forfeiture in the forfeiture phase of the trial, which may be necessary even if the forfeiture is not contested. Subparagraph (B) makes it clear that in determining what evidence or information should be accepted, the court should consider relevance and reliability. Finally, subparagraph (B) requires the court to hold a hearing when forfeiture is contested. The Committee foresees that in some instances live testimony will be needed to determine the reliability of proffered information. *Cf.* Rule 32.1(b)(1)(B)(iii) (providing the defendant in a proceeding for revocation of probation or supervised release with the opportunity, upon request, to question any adverse witness unless the judge determines this is not in the interest of justice).

**Subdivision (b)(2)(A).** Current Rule 32.2(b) provides the procedure for issuing a preliminary forfeiture order once the court finds that the government has established the nexus between the property and the offense (or the amount of the money judgment). The amendment makes clear that the preliminary order may include substitute assets if the government has met the statutory criteria.

**Subdivision (b)(2)(B).** This new subparagraph focuses on the timing of the preliminary forfeiture order, stating that the court should issue the order “sufficiently in advance of sentencing to allow the parties to suggest revisions or modifications before the order becomes final.” Many courts have delayed entry of the preliminary order until the time of sentencing. This is undesirable because the parties have no opportunity to advise the court of omissions or errors in the order before it becomes final as to the defendant (which occurs upon oral announcement of the sentence and the entry of the criminal judgment). Once the sentence has been announced, the rules give the sentencing court only very limited authority to correct errors or omissions in the preliminary forfeiture order. Pursuant to Rule 35(a), the district court may correct a sentence, including an incorporated forfeiture order, within seven days after oral announcement of the sentence. During the seven-day period, corrections are limited to those necessary to correct “arithmetical, technical, or other clear error.” *See United States v. King*, 368 F. Supp. 2d 509, 512-13 (D.S.C. 2005). Corrections of clerical errors may also be made pursuant to Rule 36. If the order contains errors or omissions that do not fall within Rules 35(a) or 36, and the court delays entry of the preliminary forfeiture order until the time of sentencing, the parties may be left with no alternative to an appeal, which is a waste of judicial resources. The amendment requires the court to enter the preliminary order in advance of sentencing to permit time for corrections, unless it is not practical to do so in an individual case.

**Subdivision (b)(2)(C).** The amendment explains how the court is to reconcile the requirement that it make the forfeiture order part of the sentence with the fact that in some cases the government will not have completed its post-conviction investigation to locate the forfeitable property by the time of sentencing. In that case the court is authorized to



issue a forfeiture order describing the property in “general” terms, which order may be amended pursuant to Rule 32.2(e)(1) when additional specific property is identified.

The authority to issue a general forfeiture order should be used only in unusual circumstances and not as a matter of course. For cases in which a general order was properly employed, see *United States v. BCCI Holdings (Luxembourg)*, 69 F. Supp. 2d 36 (D.D.C. 1999) (ordering forfeiture of all of a large, complex corporation’s assets in the United States, permitting the government to continue discovery necessary to identify and trace those assets); *United States v. Saccoccia*, 898 F. Supp. 53 (D.R.I. 1995) (ordering forfeiture of up to a specified amount of laundered drug proceeds so that the government could continue investigation which led to the discovery and forfeiture of gold bars buried by the defendant in his mother’s back yard).

**Subdivisions (b)(3) and (4).** The amendment moves the language explaining when the forfeiture order becomes final as to the defendant to new subparagraph (b)(4)(A), where it is coupled with new language explaining that the order is not final as to third parties until the completion of the ancillary proceedings provided for in Rule 32.2(c).

New subparagraphs (B) and (C) are intended to clarify what the district court is required to do at sentencing, and to respond to conflicting decisions in the courts regarding the application of Rule 36 to correct clerical errors. The new subparagraphs add considerable detail regarding the oral announcement of the forfeiture at sentencing, the reference to the forfeiture order in the judgment and commitment order, the availability of Rule 36 to correct the failure to include the forfeiture order in the judgment and commitment order, and the time to appeal.

New subparagraph (C) clarifies the time for appeals concerning forfeiture by the defendant or government from two kinds of orders: the original judgment of conviction and later orders amending or refusing to amend the judgment under Rule 32.2(e) to add additional property. This provision does not address appeals by the government or a third party from orders in ancillary proceedings under Rule 32.2(c).

**Subdivision (b)(5)(A).** The amendment clarifies the procedure for requesting a jury determination of forfeiture. The goal is to avoid an inadvertent waiver of the right to a jury determination, while also providing timely notice to the court and to the jurors themselves if they will be asked to make the forfeiture determination. The amendment requires that the court determine whether either party requests a jury determination of forfeiture in cases where the government has given notice that it is seeking forfeiture and a jury has been empaneled to determine guilt or innocence. The rule requires the court to make this determination before the jury retires. Jurors who know that they may face an additional task after they return their verdict will be more accepting of the additional responsibility in the forfeiture proceeding, and the court will be better able to plan as well.

Although the rule permits a party to make this request just before the jury retires, it is desirable, when possible, to make the request earlier, at the time when the jury is empaneled. This allows the court to plan, and also allows the court to tell potential jurors what to expect in terms of their service.

**Subdivision (b)(5)(B)** explains that “the government must submit a proposed Special Verdict Form listing each property subject to forfeiture.” Use of such a form is desirable, and the government is in the best position to draft the form.

**Subdivisions (b)(6) and (7).** These provisions are based upon the civil forfeiture provisions in Supplemental Rule G of the Federal Rules of Civil Procedure, which are also incorporated by cross reference. The amendment governs such mechanical and technical issues as the manner of publishing notice of forfeiture to third parties and the interlocutory sale of property, bringing practice under the Criminal Rules into conformity with the Civil Rules. [12/1/09]

### Rule 33. New Trial.

(a) *Defendant’s Motion.* Upon the defendant’s motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the court may take additional testimony and enter a new judgment.

(b) *Time to File.*

(1) *Newly Discovered Evidence.* Any motion for a new trial grounded on newly discovered evidence must be filed within 3 years after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the appellate court remands the case.

(2) *Other Grounds.* Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 24, 1998, effective December 1, 1998, by order adopted April 29, 2002, effective December 1, 2002; by order April 25, 2005, effective December 1, 2005; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

Former Rules 29, 33, and 34 adopted 7-day periods for their respective motions. This period has been expanded to 14 days. Experience has proved that in many cases it is not possible to prepare a satisfactory motion in 7 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. This led to frequent requests for continuances, and the filing of bare bones motions that required later supplementation. The 14-day period — including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a) — sets a more realistic time for the filing of these motions. [12/1/09]

#### Rule 34. Arresting Judgment.

(a) *In General.* Upon the defendant's motion or on its own, the court must arrest judgment if:

- (1) the indictment or information does not charge an offense; or
- (2) the court does not have jurisdiction of the charged offense.

(b) *Time to File.* The defendant must move to arrest judgment within 14 days after the court accepts a verdict or finding of guilty, or after a plea of guilty or nolo contendere.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 29, 2002, effective December 1, 2002; by order April 25, 2005, effective December 1, 2005; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

Former Rules 29, 33, and 34 adopted 7-day periods for their respective motions. This period has been expanded to 14 days. Experience has proved that in many cases it is not possible to prepare a satisfactory motion in 7 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. This led to frequent requests for continuances, and the filing of bare bones motions that required later supplementation. The 14-day period — including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a) — sets a more realistic time for the filing of these motions. [12/1/09]

#### Rule 35. Correcting or Reducing a Sentence.

(a) *Correcting Clear Error.* Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

(b) *Reducing a Sentence for Substantial Assistance.*

(1) *In General.* — Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.



(2) **Later Motion.** — Upon the government’s motion made more than one year after sentencing, the court may reduce a sentence if the defendant’s substantial assistance involved:

(A) information not known to the defendant until one year or more after sentencing;

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or

(C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

(3) **Evaluating Substantial Assistance.** — In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant’s presentence assistance.

(4) **Below Statutory Minimum.** — When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

(c) *“Sentencing” Defined.* As used in this rule, “sentencing” means the oral announcement of the sentence.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 30, 1979, effective August 1, 1979, by order adopted April 28, 1983, effective August 1, 1983, by order adopted October 12, 1984, effective November 1, 1987, by order adopted April 29, 1985, effective August 1, 1985, by order effective October 27, 1986, by P.L. 98-473, Title II, § 215(b), effective November 1, 1987, by P.L. 99-570, § 1009, effective November 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 24, 1998, effective December 1, 1998, by order adopted April 29, 2002, effective December 1, 2002; by order adopted April 26, 2004, effective December 1, 2004; by order adopted April 30, 2007, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

Former Rule 35 permitted the correction of arithmetic, technical, or clear errors within 7 days of sentencing. In light of the increased complexity of the sentencing process, the Committee concluded it would be beneficial to expand this period to 14 days, including intermediate Saturdays, Sundays, and legal holidays as provided by Rule 45(a). Extension of the period of this fashion will cause no jurisdictional problems if an appeal has been filed, because Federal Rule of Appellate Procedure 4(b)(5) expressly provides that the filing of a notice of appeal does not divest the district court of jurisdiction to correct a sentence under Rule 35(a). [12/1/09]

## Rule 36. Clerical Error.

After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.

(Amended by order adopted April 29, 2002, effective December 1, 2002.)

## Rule 37. Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal.

(a) *Relief Pending Appeal.* If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

(1) defer considering the motion;



(2) deny the motion; or

(3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

(b) *Notice to the Court of Appeals.* The movant must promptly notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue.

(c) *Remand.* The district court may decide the motion if the court of appeals remands for that purpose.

(Adopted April 23, 2012, effective December 1, 2012.)

#### COMMENT

This new rule adopts for any motion that the district court cannot grant because of a pending appeal the practice that most courts follow when a party makes a motion under Rule 60(b) of the Federal Rules of Civil Procedure to vacate a judgment that is pending on appeal. After an appeal has been docketed and while it remains pending, the district court cannot grant a Rule 60(b) motion without a remand. But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the court of appeals remands for that purpose or state that the motion raises a substantial issue. Experienced lawyers often refer to the suggestion for remand as an “indicative ruling.” (Federal Rule of Appellate Procedure 4(b)(3) lists three motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the judgment of conviction is entered and the last such motion is ruled upon. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)

The procedure formalized by Federal Rule of Appellate Procedure 12.1 is helpful when relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. In the criminal context, the Committee anticipates that Criminal Rule 37 will be used primarily if not exclusively for newly discovered evidence motions under Criminal Rule 33(b)(1) (see *United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984)), reduced sentence motions under Criminal Rule 35(b), and motions under 18 U.S.C. § 3582(c). Rule 37 does not attempt to define the circumstances in which an appeal limits or defeats the district court’s authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appellate jurisdiction. Rule 37 applies only when those rules deprive the district court of authority to grant relief without appellate permission. If the district court concludes that it has authority to grant relief without appellate permission, it can act without falling back on the indicative ruling procedure.

To ensure proper coordination of proceedings in the district court and in the appellate court, the movant must notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue. Remand is in the court of appeals’ discretion under Federal Rule of Appellate Procedure 12.1. Often it will be wise for the district court to determine whether it in fact would grant the motion if the court of appeals remands for that purpose. But a motion may present complex issues that require extensive litigation and that may either be mooted or be presented in a different context by decision of the issues raised on appeal. In such circumstances the district court may prefer to state that the motion raises a substantial issue, and to state the reasons why it prefers to decide only if the court of appeals agrees that it would be useful to decide the motion before decision of the pending appeal. The district court is not bound to grant the motion after stating that the motion raises a substantial issue; further proceedings on remand may show that the motion ought not be granted. [12/1/12]

#### Rule 38. Staying a Sentence or a Disability.

(a) *Death Sentence.* The court must stay a death sentence if the defendant appeals the conviction or sentence.

(b) *Imprisonment.*

(1) *Stay Granted.* If the defendant is released pending appeal, the court must stay a sentence of imprisonment.

(2) *Stay Denied; Place of Confinement.* If the defendant is not released pending appeal, the court may recommend to the Attorney General that the defendant be confined near the place of the trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal.

(c) *Fine.* If the defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay a sentence to pay a fine or a fine and costs. The court may stay the sentence on any terms considered appropriate and may require the defendant to:

(1) deposit all or part of the fine and costs into the district court's registry pending appeal;

(2) post a bond to pay the fine and costs; or

(3) submit to an examination concerning the defendant's assets and, if appropriate, order the defendant to refrain from dissipating assets.

(d) *Probation.* If the defendant appeals, the court may stay a sentence of probation. The court must set the terms of any stay.

(e) *Restitution and Notice to Victims.*

(1) *In General.* If the defendant appeals, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay — on any terms considered appropriate — any sentence providing for restitution under 18 U.S.C. § 3556 or notice under 18 U.S.C. § 3555.

(2) *Ensuring Compliance.* The court may issue any order reasonably necessary to ensure compliance with a restitution order or a notice order after disposition of an appeal, including:

(A) a restraining order;

(B) an injunction;

(C) an order requiring the defendant to deposit all or part of any monetary restitution into the district court's registry; or

(D) an order requiring the defendant to post a bond.

(f) *Forfeiture.* A stay of a forfeiture order is governed by Rule 32.2(d).

(g) *Disability.* If the defendant's conviction or sentence creates a civil or employment disability under federal law, the district court, or the court of appeals under Federal Rule of Appellate Procedure 8, may stay the disability pending appeal on any terms considered appropriate. The court may issue any order reasonably necessary to protect the interest represented by the disability pending appeal, including a restraining order or an injunction.

(Amended by order adopted December 27, 1948, effective January 1, 1949, by order adopted February 28, 1966, effective July 1, 1966, by order adopted December 4, 1967, effective July 1, 1968, by order adopted April 24, 1972, effective October 1, 1972, Pub. L. 98-473, title II, § 215(c), by order adopted October 12, 1984, effective November 1, 1987, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 29, 2002, effective December 1, 2002.)

**Rule 39. [Reserved.]**

**TITLE VIII. SUPPLEMENTARY AND SPECIAL PROCEEDINGS**

**Rule 40. Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District.**

(a) *In General.* A person must be taken without unnecessary delay before a magistrate judge in the district of arrest if the person has been arrested under a warrant issued in another district for:



- (i) failing to appear as required by the terms of that person's release under 18 U.S.C. §§ 3141-3156 or by a subpoena; or
- (ii) violating conditions of release set in another district.
- (b) *Proceedings*. The judge must proceed under Rule 5(c)(3) as applicable.
- (c) *Release or Detention Order*. The judge may modify any previous release or detention order issued in another district, but must state in writing the reasons for doing so.
- (d) *Video Teleconferencing*. Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 30, 1979, effective August 1, 1979, by order adopted April 28, 1982, effective August 1, 1982, by P.L. 98-473, Title II, §§ 209(c), approved October 12, 1984, effective October 12, 1984 and November 1, 1987, by order adopted March 9, 1987, effective August 1, 1987, by P.L. 98-473, Title II, § 215(d), effective November 1, 1987, by order adopted April 25, 1989, effective December 1, 1989, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 29, 1994, effective December 1, 1994, by order adopted April 27, 1995, effective December 1, 1995, by order adopted April 29, 2002, effective December 1, 2002, by order adopted April 12, 2006, effective December 1, 2006, and by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

**Subdivision (d).** The amendment provides for video teleconferencing in order to bring the rule into conformity with Rule 5(f).

### Rule 41. Search and Seizure.

#### (a) *Scope and Definitions*.

(1) *Scope*. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

(2) *Definitions*. The following definitions apply under this rule:

(A) "Property" includes documents, books, papers, any other tangible objects, and information.

(B) "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(C) "Federal law enforcement officer" means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.

(D) "Domestic terrorism" and "international terrorism" have the meanings set out in 18 U.S.C. § 2331.

(E) "Tracking device" has the meaning set out in 18 U.S.C. § 3117(b).

(b) *Authority to Issue a Warrant*. At the request of a federal law enforcement officer or an attorney for the government:

(1) a magistrate judge with authority in the district — or if none is reasonably available, a judge of a state court of record in the district — has authority to issue a warrant to search for and seize a person or property located within the district;

(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed;

(3) a magistrate judge — in an investigation of domestic terrorism or international terrorism — with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district;



(4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both; and

(5) a magistrate judge having authority in any district where activities related to the crime may have occurred, or in the District of Columbia, may issue a warrant for property that is located outside the jurisdiction of any state or district, but within any of the following:

(A) a United States territory, possession, or commonwealth;

(B) the premises — no matter who owns them — of a United States diplomatic or consular mission in a foreign state, including any appurtenant building, part of a building, or land used for the mission's purposes; or

(C) a residence and any appurtenant land owned or leased by the United States and used by United States personnel assigned to a United States diplomatic or consular mission in a foreign state.

(c) *Persons or Property Subject to Search or Seizure.* A warrant may be issued for any of the following:

(1) evidence of a crime;

(2) contraband, fruits of crime, or other items illegally possessed;

(3) property designed for use, intended for use, or used in committing a crime; or

(4) a person to be arrested or a person who is unlawfully restrained.

(d) *Obtaining a Warrant.*

(1) *In General.* After receiving an affidavit or other information, a magistrate judge — or if authorized by Rule 41(b), a judge of a state court of record — must issue the warrant if there is probable cause to search for and seize a person or property or to install and use a tracking device.

(2) *Requesting a Warrant in the Presence of a Judge.*

(A) *Warrant on an Affidavit.* When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(B) *Warrant on Sworn Testimony.* The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(C) *Recording Testimony.* Testimony taken in support of a warrant must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

(3) *Requesting a Warrant by Telephonic or Other Reliable Electronic Means.* In accordance with Rule 4.1, a magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means.

(e) *Issuing the Warrant.*

(1) *In General.* The magistrate judge or a judge of a state court of record must issue the warrant to an officer authorized to execute it.

(2) *Contents of the Warrant.*

(A) *Warrant to Search for and Seize a Person or Property.* Except for a tracking-device warrant, the warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

(i) execute the warrant within a specified time no longer than 14 days;

(ii) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and

(iii) return the warrant to the magistrate judge designated in the warrant.

(B) *Warrant Seeking Electronically Stored Information.* A warrant under Rule 41(e)(2)(A) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(e)(2)(A) and (f)(1)(A) refers to the seizure

or on-site copying of the media or information, and not to any later off-site copying or review.

(C) *Warrant for a Tracking Device.* A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

(i) complete any installation authorized by the warrant within a specified time no longer than 10 days;

(ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and

(iii) return the warrant to the judge designated in the warrant.

(f) *Executing and Returning the Warrant.*

(1) *Warrant to Search for and Seize a Person or Property.*

(A) *Noting the Time.* The officer executing the warrant must enter on it the exact date and time it was executed.

(B) *Inventory.* An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person. In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied.

(C) *Receipt.* The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(D) *Return.* The officer executing the warrant must promptly return it — together with a copy of the inventory — to the magistrate judge designated on the warrant. The officer may do so by reliable electronic means. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) *Warrant for a Tracking Device.*

(A) *Noting the Time.* The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) *Return.* Within 10 days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant. The officer may do so by reliable electronic means.

(C) *Service.* Within 10 days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

(3) *Delayed Notice.* Upon the government's request, a magistrate judge — or if authorized by Rule 41(b), a judge of a state court of record — may delay any notice required by this rule if the delay is authorized by statute.

(g) *Motion to Return Property.* A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must



return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

(h) *Motion to Suppress.* A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

(i) *Forwarding Papers to the Clerk.* The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.

(Amended by order adopted December 27, 1948, effective October 20, 1949, by order adopted April 9, 1956, effective July 8, 1956, by order adopted April 24, 1972, effective October 1, 1972, by order adopted March 18, 1974, effective July 1, 1974, by order adopted April 26, 1976 and July 8, 1976, effective August 1, 1976, by order adopted July 30, 1977, effective October 1, 1977, by order adopted April 30, 1979, effective August 1, 1979, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 25, 1989, effective December 1, 1989, by order adopted May 1, 1990, effective December 1, 1990, by order adopted April 22, 1993, effective December 1, 1993, October 26, 2001, by order adopted April 29, 2002, effective December 1, 2002, by order adopted April 12, 2006, effective December 1, 2006, by order effective December 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009, by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

**Subdivision (e)(2).** Computers and other electronic storage media commonly contain such large amounts of information that it is often impractical for law enforcement to review all of the information during execution of the warrant at the search location. This rule acknowledges the need for a two-step process: officers may seize or copy the entire storage medium and review it later to determine what electronically stored information falls within the scope of the warrant.

The term “electronically stored information” is drawn from Rule 34(a) of the Federal Rules of Civil Procedure, which states that it includes “writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained.” The 2006 Committee Note to Rule 34(a) explains that the description is intended to cover all current types of computer-based information and to encompass future changes and developments. The same broad and flexible description is intended under Rule 41.

In addition to addressing the two-step process inherent in searches for electronically stored information, the Rule limits the 10 [14]/f8 day execution period to the actual execution of the warrant and the on-site activity. While consideration was given to a presumptive national or uniform time period within which any subsequent off-site copying or review of the media or electronically stored information would take place, the practical reality is that there is no basis for a “one size fits all” presumptive period. A substantial amount of time can be involved in the forensic imaging and review of information. This is due to the sheer size of the storage capacity of media, difficulties created by encryption and booby traps, and the workload of the computer labs. The rule does not prevent a judge from imposing a deadline for the return of the storage media or access to the electronically stored information at the time the warrant is issued. However, to arbitrarily set a presumptive time period for the return could result in frequent petitions to the court for additional time.

It was not the intent of the amendment to leave the property owner without an expectation of the timing for return of the property, excluding contraband or instrumentalities of crime, or a remedy. Current Rule 41(g) already provides a process for the “person aggrieved” to seek an order from the court for a return of the property, including storage media or electronically stored information, under reasonable circumstances.



Where the “person aggrieved” requires access to the storage media or the electronically stored information earlier than anticipated by law enforcement or ordered by the court, the court on a case by case basis can fashion an appropriate remedy, taking into account the time needed to image and search the data and any prejudice to the aggrieved party.

The amended rule does not address the specificity of description that the Fourth Amendment may require in a warrant for electronically stored information, leaving the application of this and other constitutional standards concerning both the seizure and the search to ongoing case law development.

**Subdivision (f)(1).** Current Rule 41(f)(1) does not address the question of whether the inventory should include a description of the electronically stored information contained in the media seized. Where it is impractical to record a description of the electronically stored information at the scene, the inventory may list the physical storage media seized. Recording a description of the electronically stored information at the scene is likely to be the exception, and not the rule, given the large amounts of information contained on electronic storage media and the impracticality for law enforcement to image and review all of the information during the execution of the warrant. This is consistent with practice in the “paper world.” In circumstances where filing cabinets of documents are seized, routine practice is to list the storage devices, i.e., the cabinets, on the inventory, as opposed to making a document by document list of the contents. [12/1/09]

**Subdivisions (d)(3) and (e)(3).** The amendment deletes the provisions that govern the application for and issuance of warrants by telephone or other reliable electronic means. These provisions have been transferred to new Rule 4.1, which governs complaints and warrants under Rules 3, 4, 9, and 41.

**Subdivision (e)(2).** The amendment eliminates unnecessary references to “calendar” days. As amended effective December 1, 2009, Rule 45(a)(1) provides that all periods of time stated in days include “every day, including intermediate Saturdays, Sundays, and legal holidays[.]”

**Subdivisions (f)(1) and (2).** The amendment permits any warrant return to be made by reliable electronic means. Requiring an in-person return can be burdensome on law enforcement, particularly in large districts when the return can require a great deal of time and travel. In contrast, no interest of the accused is affected by allowing what is normally a ministerial act to be done electronically. Additionally, in subdivision (f)(2) the amendment eliminates unnecessary references to “calendar” days. As amended effective December 1, 2009, Rule 45(a)(1) provides that all periods of time stated in days include “every day, including intermediate Saturdays, Sundays, and legal holidays[.]” [12/1/11]

## Rule 42. Criminal Contempt.

(a) *Disposition After Notice.* Any person who commits criminal contempt may be punished for that contempt after prosecution on notice.

(1) *Notice.* The court must give the person notice in open court, in an order to show cause, or in an arrest order. The notice must:

(A) state the time and place of the trial;

(B) allow the defendant a reasonable time to prepare a defense; and

(C) state the essential facts constituting the charged criminal contempt and describe it as such.

(2) *Appointing a Prosecutor.* The court must request that the contempt be prosecuted by an attorney for the government, unless the interest of justice requires the appointment of another attorney. If the government declines the request, the court must appoint another attorney to prosecute the contempt.

(3) *Trial and Disposition.* A person being prosecuted for criminal contempt is entitled to a jury trial in any case in which federal law so provides and must be released or detained as Rule 46 provides. If the criminal contempt involves disrespect toward or criticism of a judge, that judge is disqualified from presiding at the contempt trial or hearing unless the defendant consents. Upon a finding or verdict of guilty, the court must impose the punishment.

(b) *Summary Disposition.* Notwithstanding any other provision of these rules, the court (other than a magistrate judge) may summarily punish a person who commits criminal contempt in its presence if the judge saw or heard the contemptuous conduct and so certifies; a magistrate judge may summarily punish a person as provided in 28 U.S.C. § 636(e). The contempt order must recite the facts, be signed by the judge, and be filed with the clerk.

(Amended by order adopted March 9, 1987, effective August 1, 1987, and by order adopted April 29, 2002, effective December 1, 2002.)

## TITLE IX. GENERAL PROVISIONS

### Rule 43. Defendant's Presence.

(a) *When Required.* Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at:

- (1) the initial appearance, the initial arraignment, and the plea;
- (2) every trial stage, including jury impanelment and the return of the verdict; and
- (3) sentencing.

(b) *When Not Required.* A defendant need not be present under any of the following circumstances:

(1) *Organizational Defendant.* — The defendant is an organization represented by counsel who is present.

(2) *Misdemeanor Offense.* — The offense is punishable by fine or by imprisonment for not more than one year, or both, and with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur by video teleconferencing or in the defendant's absence.

(3) *Conference or Hearing on a Legal Question.* — The proceeding involves only a conference or hearing on a question of law.

(4) *Sentence Correction.* — The proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c).

(c) *Waiving Continued Presence.*

(1) *In General.* — A defendant who was initially present at trial, or who had pleaded guilty or nolo contendere, waives the right to be present under the following circumstances:

(A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial;

(B) in a noncapital case, when the defendant is voluntarily absent during sentencing; or

(C) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

(2) *Waiver's Effect.* — If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

(Amended by order adopted April 22, 1974, effective December 1, 1975, by order adopted July 31, 1975, effective December 1, 1975, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 27, 1995, effective December 1, 1995, by order adopted April 24, 1998, effective December 1, 1998, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 26, 2011, effective December 1, 2011.)

## COMMENT

**Subdivision (b).** This rule currently allows proceedings in a misdemeanor case to be conducted in the defendant's absence with the defendant's written consent and the court's



permission. The amendment allows participation through video teleconference as an alternative to appearing in person or not appearing. Participation by video teleconference is permitted only when the defendant has consented in writing and received the court's permission.

The Committee reiterates the concerns expressed in the 2002 Committee Notes to Rules 5 and 10, when those rules were amended to permit video conferencing. The Committee recognized the intangible benefits and impact of requiring a defendant to appear before a federal judicial officer in a federal courtroom, and what is lost when virtual presence is substituted for actual presence. These concerns are particularly heightened when a defendant is not present for the determination of guilt and sentencing. However, the Committee concluded that the use of video conferencing may be valuable in circumstances where the defendant would otherwise be unable to attend and the rule now authorizes proceedings in absentia.

#### **Rule 44. Right to and Appointment of Counsel.**

(a) *Right to Appointed Counsel.* A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.

(b) *Appointment Procedure.* Federal law and local court rules govern the procedure for implementing the right to counsel.

(c) *Inquiry Into Joint Representation.*

(1) *Joint Representation.* Joint representation occurs when:

(A) two or more defendants have been charged jointly under Rule 8(b) or have been joined for trial under Rule 13; and

(B) the defendants are represented by the same counsel, or counsel who are associated in law practice.

(2) *Court's Responsibilities in Cases of Joint Representation.* The court must promptly inquire about the propriety of joint representation and must personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless there is good cause to believe that no conflict of interest is likely to arise, the court must take appropriate measures to protect each defendant's right to counsel.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 30, 1979, effective December 1, 1980, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 29, 2002, effective December 1, 2002.)

#### **Rule 45. Computing and Extending Time.**

(a) *Computing Time.* The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;



(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 45(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 45(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located.

(b) *Extending Time.*

(1) *In General.* When an act must or may be done within a specified period, the court on its own may extend the time, or for good cause may do so on a party's motion made:

(A) before the originally prescribed or previously extended time expires; or

(B) after the time expires if the party failed to act because of excusable neglect.

(2) *Exception.* The court may not extend the time to take any action under Rule 35, except as stated in that rule.

(c) *Additional Time After Certain Kinds of Service.* Whenever a party must or may act within a specified period after service and service is made in the manner provided under Federal Rule of Civil Procedure 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under subdivision (a).

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted December 4, 1967, effective July 1, 1968, by order adopted March 1, 1971, effective July 1, 1971, by order adopted April 28, 1982, effective August 1, 1982, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 29, 2002, effective December 1, 2002; by order April 25, 2005, effective December 1, 2005; by order adopted April 30, 2007, effective December 1, 2007, by order effective December 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a statute that does not specify a method of computing time, a Federal Rule of Criminal Procedure, a local rule, or a court order. In accordance with Rule 57(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a). In making these time computation rules applicable to statutory time periods, subdivision (a) is consistent with Civil Rule 6(a). It is also consistent with the language of Rule 45 prior to restyling, when the rule applied to "computing any period of

time.” Although the restyled Rule 45(a) referred only to time periods “specified in these rules, any local rule, or any court order,” some courts nonetheless applied the restyled Rule 45(a) when computing various statutory periods.

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of a date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. *See, e.g.*, 18 U.S.C. § 3142(d) (excluding Saturdays, Sundays, and holidays from 10 day period). In addition, because the time period in Rule 46(h) is derived from 18 U.S.C. §§ 3142(d) and 3144, the Committee concluded that Rule 45(a) should not be applied to Rule 46(h).

**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. *See, e.g.*, Rule 35(b)(1). Subdivision (a)(1)(B)’s directive to “count every day” is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 45(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 45(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day — and the 10-day period not infrequently ended later than the 14-day period. *See Milimore Sales, Inc. v. Int’l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: if the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk’s office is inaccessible.

Where subdivision (a) formerly referred to the “act, event, or default” that triggers the deadline, the new subdivision (a) refers simply to the “event” that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change the meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rules 29(c)(1), 33(b)(2), 34, and 35(a).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method — two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using weeklong periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were generally retained without change.

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of



Criminal Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be “rounded up” to the next whole hour. Subdivision (a)(3) addresses situations when the clerk’s office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk’s office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk’s office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday or day when the clerk’s office is inaccessible.

Subdivision (a)(3)’s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk’s office. The reference to “weather” was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk’s office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule CR 49.11 (“A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.”).

**Subdivision (a)(4).** New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. A local rule may, for example, address the problems that might arise if a single district has clerk’s offices in different time zones, or provide that papers filed in a drop box after the normal hours of the clerk’s office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that “[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.” A corresponding provision exists in Rule 56(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g.*, *Casalduc v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

**Subdivision (a)(5).** New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Criminal Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rule 35(a) (stating that a court may correct an arithmetic or technical error in a sentence “[w]ithin 14 days after sentencing”). A backward-looking time period requires something



to be done within a period of time *before* an event. *See, e.g.*, Rule 47(c) (stating that a party must serve a written motion “at least 7 days before the hearing date”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days after an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days before an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk’s office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday — no earlier than Tuesday, September 4.

**Subdivision (a)(6).** New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Criminal Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are declared a holiday by the President or Congress.

For forward-counted periods — *i.e.*, periods that are measured after an event — subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot’s Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk’s office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday — no earlier than Tuesday, April 22. [12/1/09]

### Rule 46. Release from Custody; Supervising Detention.

(a) *Before Trial.* The provisions of 18 U.S.C. §§ 3142 and 3144 govern pretrial release.

(b) *During Trial.* A person released before trial continues on release during trial under the same terms and conditions. But the court may order different terms and conditions or terminate the release if necessary to ensure that the person will be present during trial or that the person’s conduct will not obstruct the orderly and expeditious progress of the trial.

(c) *Pending Sentencing or Appeal.* The provisions of 18 U.S.C. § 3143 govern release pending sentencing or appeal. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) *Pending Hearing on a Violation of Probation or Supervised Release.* Rule 32.1(a)(6) governs release pending a hearing on a violation of probation or supervised release.

(e) *Surety.* The court must not approve a bond unless any surety appears to be qualified. Every surety, except a legally approved corporate surety, must demonstrate by affidavit that its assets are adequate. The court may require the affidavit to describe the following:

(1) the property that the surety proposes to use as security;

(2) any encumbrance on that property;

(3) the number and amount of any other undischarged bonds and bail undertakings the surety has issued; and

(4) any other liability of the surety.

(f) *Bail Forfeiture.*

(1) *Declaration.* The court must declare the bail forfeited if a condition of the bond is breached.

(2) *Setting Aside.* The court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if:

(A) the surety later surrenders into custody the person released on the surety's appearance bond; or

(B) it appears that justice does not require bail forfeiture.

(3) *Enforcement.*

(A) *Default Judgment and Execution.* If it does not set aside a bail forfeiture, the court must, upon the government's motion, enter a default judgment.

(B) *Jurisdiction and Service.* By entering into a bond, each surety submits to the district court's jurisdiction and irrevocably appoints the district clerk as its agent to receive service of any filings affecting its liability.

(C) *Motion to Enforce.* The court may, upon the government's motion, enforce the surety's liability without an independent action. The government must serve any motion, and notice as the court prescribes, on the district clerk. If so served, the clerk must promptly mail a copy to the surety at its last known address.

(4) *Remission.* After entering a judgment under Rule 46(f)(3), the court may remit in whole or in part the judgment under the same conditions specified in Rule 46(f)(2).

(g) *Exoneration.* The court must exonerate the surety and release any bail when a bond condition has been satisfied or when the court has set aside or remitted the forfeiture. The court must exonerate a surety who deposits cash in the amount of the bond or timely surrenders the defendant into custody.

(h) *Supervising Detention Pending Trial.*

(1) *In General.* To eliminate unnecessary detention, the court must supervise the detention within the district of any defendants awaiting trial and of any persons held as material witnesses.

(2) *Reports.* An attorney for the government must report biweekly to the court, listing each material witness held in custody for more than 10 days pending indictment, arraignment, or trial. For each material witness listed in the report, an attorney for the government must state why the witness should not be released with or without a deposition being taken under Rule 15(a).

(i) *Forfeiture of Property.* The court may dispose of a charged offense by ordering the forfeiture of 18 U.S.C. § 3142(c)(1)(B)(xi) property under 18 U.S.C. § 3146(d), if a fine in the amount of the property's value would be an appropriate sentence for the charged offense.

(j) *Producing a Statement.*

(1) *In General.* Rule 26.2(a)-(d) and (f) applies at a detention hearing under 18 U.S.C. § 3142, unless the court for good cause rules otherwise.

(2) *Sanctions for Not Producing a Statement.* If a party disobeys a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony at the detention hearing.

(Amended by order adopted April 9, 1956, effective July 8, 1956, by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by P.L. 98-473, Title II, §§ 209(d)(1), 209(d)(2), 209(d)(3), 209(d)(4), approved October 12, 1984, and by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, amended by P.L. 103-322 approved September 13, 1994, and by order adopted April 29, 2002, effective December 1, 2002.)

## **Rule 47. Motions and Supporting Affidavits.**

(a) *In General.* A party applying to the court for an order must do so by motion.

(b) *Form and Content of a Motion.* A motion — except when made during a trial or hearing — must be in writing, unless the court permits the party to make the motion by



other means. A motion must state the grounds on which it is based and the relief or order sought. A motion may be supported by affidavit.

(c) *Timing of a Motion.* A party must serve a written motion — other than one that the court may hear ex parte — and any hearing notice at least 7 days before the hearing date, unless a rule or court order sets a different period. For good cause, the court may set a different period upon ex parte application.

(d) *Affidavit Supporting a Motion.* The moving party must serve any supporting affidavit with the motion. A responding party must serve any opposing affidavit at least one day before the hearing, unless the court permits later service.

(Amended by order adopted April 29, 2002, effective December 1, 2002; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The time set in the former rule at 5 days, which excluded intermediate Saturdays, Sundays, and legal holidays, has been expanded to 7 days. See the Committee Note to Rule 45(a). [12/1/09]

#### Rule 48. Dismissal.

(a) *By the Government.* The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

(b) *By the Court.* The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

- (1) presenting a charge to a grand jury;
- (2) filing an information against a defendant; or
- (3) bringing a defendant to trial.

(Amended by order adopted April 29, 2002, effective December 1, 2002.)

#### Rule 49. Serving and Filing Papers.

(a) *When Required.* A party must serve on every other party any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper.

(b) *How Made.* Service must be made in the manner provided for a civil action. When these rules or a court order requires or permits service on a party represented by an attorney, service must be made on the attorney instead of the party, unless the court orders otherwise.

(c) *Notice of a Court Order.* When the court issues an order on any post-arraignment motion, the clerk must provide notice in a manner provided for in a civil action. Except as Federal Rule of Appellate Procedure 4(b) provides otherwise, the clerk's failure to give notice does not affect the time to appeal, or relieve — or authorize the court to relieve — a party's failure to appeal within the allowed time.

(d) *Filing.* A party must file with the court a copy of any paper the party is required to serve. A paper must be filed in a manner provided for in a civil action.

(e) *Electronic Service and Filing.* A court may, by local rule, allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. A local rule may require electronic filing only if reasonable exceptions are allowed. A paper filed electronically in compliance with a local rule is written or in writing under these rules.

(Amended by order adopted February 28, 1966, effective July 1, 1966, by order adopted December 4, 1967, effective July 1, 1968, by order adopted April 29, 1985, effective August 1, 1985, by order adopted March 9, 1987, effective August 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 27, 1995,



effective December 1, 1995, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

**Subdivision (e).** Filing papers by electronic means is added as new subdivision (e), which is drawn from Civil Rule 5(d)(3). It makes it clear that a paper filed electronically in compliance with the Court's local rule is a written paper.

#### **Rule 49.1. Privacy Protection for Filings Made with the Court.**

(a) *Redacted Filings.* Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials;
- (4) the last four digits of the financial-account number; and
- (5) the city and state of the home address.

(b) *Exemptions from the Redaction Requirement.* The redaction requirement does not apply to the following:

- (1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by Rule 49.1(d);
- (6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255;
- (7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;
- (8) an arrest or search warrant; and
- (9) a charging document and an affidavit filed in support of any charging document.

(c) *Immigration Cases.* A filing in an action brought under 28 U.S.C. § 2241 that relates to the petitioner's immigration rights is governed by Federal Rule of Civil Procedure 5.2.

(d) *Filings Made Under Seal.* The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) *Protective Orders.* For good cause, the court may by order in a case:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) *Option for Additional Unredacted Filing Under Seal.* A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) *Option for Filing a Reference List.* A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) *Waiver of Protection of Identifiers.* A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

(Adopted by order effective December 1, 2007.)

### **Rule 50. Prompt Disposition.**

Scheduling preference must be given to criminal proceedings as far as practicable.

(Amended by order adopted April 24, 1972, effective October 1, 1972, by order adopted March 18, 1974, effective July 1, 1974, by order adopted April 26, 1976 and July 8, 1976, effective August 1, 1976, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 51. Preserving Claimed Error.**

(a) *Exceptions Unnecessary.* Exceptions to rulings or orders of the court are unnecessary.

(b) *Preserving a Claim of Error.* A party may preserve a claim of error by informing the court — when the court ruling or order is made or sought — of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

(Amended by order adopted March 9, 1987, effective August 1, 1987, and by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 52. Harmless and Plain Error.**

(a) *Harmless Error.* Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(b) *Plain Error.* A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

(Amended by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 53. Courtroom Photographing and Broadcasting Prohibited.**

Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.

(Amended by order adopted April 29, 2002, effective December 1, 2002.)

### **Rule 54. [Transferred.]**

[All of Rule 54 was moved to Rule 1].

### **Rule 55. Records.**

The clerk of the district court must keep records of criminal proceedings in the form prescribed by the Director of the Administrative Office of the United States Courts. The clerk must enter in the records every court order or judgment and the date of entry.

(Amended by order adopted December 27, 1948, effective October 20, 1949, by order adopted February 28, 1966, effective July 1, 1966, by order adopted April 24, 1972, effective October 1, 1972, by order adopted April 28, 1983, effective August 1, 1983, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 29, 2002, effective December 1, 2002.)

### Rule 56. When Court Is Open.

(a) *In General.* A district court is considered always open for any filing, and for issuing and returning process, making a motion, or entering an order.

(b) *Office Hours.* The clerk's office — with the clerk or a deputy in attendance — must be open during business hours on all days except Saturdays, Sundays, and legal holidays.

(c) *Special Hours.* A court may provide by local rule or order that its clerk's office will be open for specified hours on Saturdays or legal holidays other than those set aside by statute for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(Amended by order adopted December 27, 1948, effective October 20, 1949, by order adopted February 28, 1966, effective July 1, 1966, by order adopted December 4, 1967, effective July 1, 1968, by order adopted March 1, 1971, effective July 1, 1971, by order adopted April 25, 1988, effective August 1, 1988, and by order adopted April 29, 2002, effective December 1, 2002.)

### Rule 57. District Court Rules.

(a) *In General.*

(1) *Adopting Local Rules.* Each district court acting by a majority of its district judges may, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice. A local rule must be consistent with — but not duplicative of — federal statutes and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) *Limiting Enforcement.* A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of an unintentional failure to comply with the requirement.

(b) *Procedure When There Is No Controlling Law.* A judge may regulate practice in any manner consistent with federal law, these rules, and the local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local district rules unless the alleged violator was furnished with actual notice of the requirement before the noncompliance.

(c) *Effective Date and Notice.* A local rule adopted under this rule takes effect on the date specified by the district court and remains in effect unless amended by the district court or abrogated by the judicial council of the circuit in which the district is located. Copies of local rules and their amendments, when promulgated, must be furnished to the judicial council and the Administrative Office of the United States Courts and must be made available to the public.

(Amended by order adopted December 27, 1948, effective October 20, 1949, by order adopted December 4, 1967, effective July 1, 1968, by order adopted April 29, 1985, effective August 1, 1985, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 27, 1995, effective December 1, 1995, and by order adopted April 29, 2002, effective December 1, 2002.)

### Rule 58. Petty Offenses and Other Misdemeanors.

(a) *Scope.*

(1) *In General.* These rules apply in petty offense and other misdemeanor cases and on appeal to a district judge in a case tried by a magistrate judge, unless this rule provides otherwise.

(2) *Petty Offense Case Without Imprisonment.* In a case involving a petty offense for which no sentence of imprisonment will be imposed, the court may follow any provision



of these rules that is not inconsistent with this rule and that the court considers appropriate.

(3) *Definition.* As used in this rule, the term “petty offense for which no sentence of imprisonment will be imposed” means a petty offense for which the court determines that, in the event of conviction, no sentence of imprisonment will be imposed.

(b) *Pretrial Procedure.*

(1) *Charging Document.* The trial of a misdemeanor may proceed on an indictment, information, or complaint. The trial of a petty offense may also proceed on a citation or violation notice.

(2) *Initial Appearance.* At the defendant’s initial appearance on a petty offense or other misdemeanor charge, the magistrate judge must inform the defendant of the following:

(A) the charge, and the minimum and maximum penalties, including imprisonment, fines, any special assessment under 18 U.S.C. § 3013, and restitution under 18 U.S.C. § 3556;

(B) the right to retain counsel;

(C) the right to request the appointment of counsel if the defendant is unable to retain counsel — unless the charge is a petty offense for which the appointment of counsel is not required;

(D) the defendant’s right not to make a statement, and that any statement made may be used against the defendant;

(E) the right to trial, judgment, and sentencing before a district judge — unless:

(i) the charge is a petty offense; or

(ii) the defendant consents to trial, judgment, and sentencing before a magistrate judge;

(F) the right to a jury trial before either a magistrate judge or a district judge — unless the charge is a petty offense; and

(G) any right to a preliminary hearing under Rule 5.1, and the general circumstances, if any, under which the defendant may secure pretrial release.

(3) *Arraignment.*

(A) *Plea Before a Magistrate Judge.* A magistrate judge may take the defendant’s plea in a petty offense case. In every other misdemeanor case, a magistrate judge may take the plea only if the defendant consents either in writing or on the record to be tried before a magistrate judge and specifically waives trial before a district judge. The defendant may plead not guilty, guilty, or (with the consent of the magistrate judge) *nolo contendere*.

(B) *Failure to Consent.* Except in a petty offense case, the magistrate judge must order a defendant who does not consent to trial before a magistrate judge to appear before a district judge for further proceedings.

(c) *Additional Procedures in Certain Petty Offense Cases.* The following procedures also apply in a case involving a petty offense for which no sentence of imprisonment will be imposed:

(1) *Guilty or Nolo Contendere Plea.* The court must not accept a guilty or *nolo contendere* plea unless satisfied that the defendant understands the nature of the charge and the maximum possible penalty.

(2) *Waiving Venue.*

(A) *Conditions of Waiving Venue.* If a defendant is arrested, held, or present in a district different from the one where the indictment, information, complaint, citation, or violation notice is pending, the defendant may state in writing a desire to plead guilty or *nolo contendere*; to waive venue and trial in the district where the proceeding is pending; and to consent to the court’s disposing of the case in the district where the defendant was arrested, is held, or is present.

(B) *Effect of Waiving Venue.* Unless the defendant later pleads not guilty, the prosecution will proceed in the district where the defendant was arrested, is held, or is present. The district clerk must notify the clerk in the original district of the defendant’s waiver of venue. The defendant’s statement of a desire to plead guilty or *nolo contendere* is not admissible against the defendant.

(3) *Sentencing.* The court must give the defendant an opportunity to be heard in mitigation and then proceed immediately to sentencing. The court may, however, postpone sentencing to allow the probation service to investigate or to permit either party to submit additional information.

(4) *Notice of a Right to Appeal.* After imposing sentence in a case tried on a not-guilty plea, the court must advise the defendant of a right to appeal the conviction and of any right to appeal the sentence. If the defendant was convicted on a plea of guilty or nolo contendere, the court must advise the defendant of any right to appeal the sentence.

(d) *Paying a Fixed Sum in Lieu of Appearance.*

(1) *In General.* If the court has a local rule governing forfeiture of collateral, the court may accept a fixed-sum payment in lieu of the defendant's appearance and end the case, but the fixed sum may not exceed the maximum fine allowed by law.

(2) *Notice to Appear.* If the defendant fails to pay a fixed sum, request a hearing, or appear in response to a citation or violation notice, the district clerk or a magistrate judge may issue a notice for the defendant to appear before the court on a date certain. The notice may give the defendant an additional opportunity to pay a fixed sum in lieu of appearance. The district clerk must serve the notice on the defendant by mailing a copy to the defendant's last known address.

(3) *Summons or Warrant.* Upon an indictment, or upon a showing by one of the other charging documents specified in Rule 58(b)(1) of probable cause to believe that an offense has been committed and that the defendant has committed it, the court may issue an arrest warrant or, if no warrant is requested by an attorney for the government, a summons. The showing of probable cause must be made under oath or under penalty of perjury, but the affiant need not appear before the court. If the defendant fails to appear before the court in response to a summons, the court may summarily issue a warrant for the defendant's arrest.

(e) *Recording the Proceedings.* The court must record any proceedings under this rule by using a court reporter or a suitable recording device.

(f) *New Trial.* Rule 33 applies to a motion for a new trial.

(g) *Appeal.*

(1) *From a District Judge's Order or Judgment.* The Federal Rules of Appellate Procedure govern an appeal from a district judge's order or a judgment of conviction or sentence.

(2) *From a Magistrate Judge's Order or Judgment.*

(A) *Interlocutory Appeal.* Either party may appeal an order of a magistrate judge to a district judge within 14 days of its entry if a district judge's order could similarly be appealed. The party appealing must file a notice with the clerk specifying the order being appealed and must serve a copy on the adverse party.

(B) *Appeal from a Conviction or Sentence.* A defendant may appeal a magistrate judge's judgment of conviction or sentence to a district judge within 14 days of its entry. To appeal, the defendant must file a notice with the clerk specifying the judgment being appealed and must serve a copy on an attorney for the government.

(C) *Record.* The record consists of the original papers and exhibits in the case; any transcript, tape, or other recording of the proceedings; and a certified copy of the docket entries. For purposes of the appeal, a copy of the record of the proceedings must be made available to a defendant who establishes by affidavit an inability to pay or give security for the record. The Director of the Administrative Office of the United States Courts must pay for those copies.

(D) *Scope of Appeal.* The defendant is not entitled to a trial de novo by a district judge. The scope of the appeal is the same as in an appeal to the court of appeals from a judgment entered by a district judge.

(3) *Stay of Execution and Release Pending Appeal.* Rule 38 applies to a stay of a judgment of conviction or sentence. The court may release the defendant pending appeal under the law relating to release pending appeal from a district court to a court of appeals.



(Added by order adopted May 1, 1990, effective December 1, 1990, amended by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 22, 1993, effective December 1, 1993, by order adopted April 11, 1997, effective December 1, 1997, by order adopted April 29, 2002, effective December 1, 2002, and by order adopted April 12, 2006, effective December 1, 2006; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The times set in the former rule at 10 days have been revised to 14 days. See the Committee Note to Rule 45(a). [12/1/09]

### Rule 59. Matters Before a Magistrate Judge.

(a) *Nondispositive Matters.* A district judge may refer to a magistrate judge for determination any matter that does not dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings and, when appropriate, enter on the record an oral or written order stating the determination. A party may serve and file objections to the order within 14 days after being served with a copy of a written order or after the oral order is stated on the record, or at some other time the court sets. The district judge must consider timely objections and modify or set aside any part of the order that is contrary to law or clearly erroneous. Failure to object in accordance with this rule waives a party's right to review.

(b) *Dispositive Matters.*

(1) *Referral to Magistrate Judge.* A district judge may refer to a magistrate judge for recommendation a defendant's motion to dismiss or quash an indictment or information, a motion to suppress evidence, or any matter that may dispose of a charge or defense. The magistrate judge must promptly conduct the required proceedings. A record must be made of any evidentiary proceeding and of any other proceeding if the magistrate judge considers it necessary. The magistrate judge must enter on the record a recommendation for disposing of the matter, including any proposed findings of fact. The clerk must immediately serve copies on all parties.

(2) *Objections to Findings and Recommendations.* Within 14 days after being served with a copy of the recommended disposition, or at some other time the court sets, a party may serve and file specific written objections to the proposed findings and recommendations. Unless the district judge directs otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient. Failure to object in accordance with this rule waives a party's right to review.

(3) *De Novo Review of Recommendations.* The district judge must consider de novo any objection to the magistrate judge's recommendation. The district judge may accept, reject, or modify the recommendation, receive further evidence, or resubmit the matter to the magistrate judge with instructions.

(As adopted April 25, 2005, effective December 1, 2005; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The times set in the former rule at 10 days have been revised to 14 days. See the Committee Note to Rule 45(a). [12/1/09]

### Rule 60. Victim's Rights.

(a) *In General.*

(1) *Notice of a Proceeding.* The government must use its best efforts to give the victim reasonable, accurate, and timely notice of any public court proceeding involving the crime.



(2) *Attending the Proceeding.* The court must not exclude a victim from a public court proceeding involving the crime, unless the court determines by clear and convincing evidence that the victim's testimony would be materially altered if the victim heard other testimony at that proceeding. In determining whether to exclude a victim, the court must make every effort to permit the fullest attendance possible by the victim and must consider reasonable alternatives to exclusion. The reasons for any exclusion must be clearly stated on the record.

(3) *Right to Be Heard on Release, a Plea, or Sentencing.* The court must permit a victim to be reasonably heard at any public proceeding in the district court concerning release, plea, or sentencing involving the crime.

(b) *Enforcement and Limitations.*

(1) *Time for Deciding a Motion.* The court must promptly decide any motion asserting a victim's rights described in these rules.

(2) *Who May Assert the Rights.* A victim's rights described in these rules may be asserted by the victim, the victim's lawful representative, the attorney for the government, or any other person as authorized by 18 U.S.C. § 3771(d) and (e).

(3) *Multiple Victims.* If the court finds that the number of victims makes it impracticable to accord all of them their rights described in these rules, the court must fashion a reasonable procedure that gives effect to these rights without unduly complicating or prolonging the proceedings.

(4) *Where Rights May Be Asserted.* A victim's rights described in these rules must be asserted in the district where a defendant is being prosecuted for the crime.

(5) *Limitations on Relief.* A victim may move to reopen a plea or sentence only if:

(A) the victim asked to be heard before or during the proceeding at issue, and the request was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 10 days after the denial, and the writ is granted; and

(C) in the case of a plea, the accused has not pleaded to the highest offense charged.

(6) *No New Trial.* A failure to afford a victim any right described in these rules is not grounds for a new trial.

(Added Dec. 1, 2008.)

### Rule 61. Title.

These rules may be known and cited as the Federal Rules of Criminal Procedure.

(Amended by order adopted April 29, 2002, effective December 1, 2002; April 23, 2008, effective December 1, 2008.)

**Editor's Notes.** This rule was transferred from Rule 60, effective December 1, 2008.

**RULES OF EVIDENCE  
FOR  
UNITED STATES COURTS  
AND  
MAGISTRATE JUDGES**

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Effective July 1, 1975,  
as amended to December 1, 2012.

RULES OF EVIDENCE

FOR

COURTS OF JUSTICE

AND

MAGISTRATE JUDGES

THE  
NEW YORK STATE BAR ASSOCIATION



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# RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATE JUDGES

## I. GENERAL PROVISIONS

### Rule 101. Scope; Definitions.

(a) *Scope.* These rules apply to proceedings in United States courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

(b) *Definitions.* In these rules:

- (1) “civil case” means a civil action or proceeding;
- (2) “criminal case” includes a criminal proceeding;
- (3) “public office” includes a public agency;
- (4) “record” includes a memorandum, report, or data compilation;
- (5) a “rule prescribed by the Supreme Court” means a rule adopted by the Supreme Court under statutory authority; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 25, 1988, effective November 1, 1988, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 26, 2011, effective December 1, 2011.)

## COMMENT

The language of Rule 101 has been amended, and definitions have been added, as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The reference to electronically stored information is intended to track the language of Fed. R. Civ. P. 34.

*The Style Project* — The Evidence Rules are the fourth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, and Civil Rules.

1. *General Guidelines* — Guidance in drafting, usage, and style was provided by Bryan Garner, *Guidelines for Drafting and Editing Court Rules*, Administrative Office of the United States Courts (1969) and Bryan Garner, *Dictionary of Modern Legal Usage* (2d ed. 1995). See also Joseph Kimble, *Guiding Principles for Restyling the Civil Rules*, in *Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure*, at page x (Feb. 2005) (available at [http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Prelimx\\_xdraftx\\_xproposedx\\_xpt1.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Prelimx_xdraftx_xproposedx_xpt1.pdf)); Joseph Kimble, *Lessons in Drafting from the New Federal Rules of Civil Procedure*, 12 *Scribes J. Legal Writing* 25 (2008-2009). For specific commentary on the Evidence restyling project, see Joseph Kimble, *Drafting Examples from the Proposed New Federal Rules of Evidence*, 88 *Mich. B.J.* 52 (Aug.



2009); 88 Mich. B.J. 46 (Sept. 2009); 88 Mich. B.J. 54 (Oct. 2009); 88 Mich. B.J. 50 (Nov. 2009).

2. *Formatting Changes* — Many of the changes in the restyled Evidence Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. “Hanging indents” are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed. Rules 103, 404(b), 606(b), and 612 illustrate the benefits of formatting changes.

3. *Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words* — The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved by not switching between “accused” and “defendant” or between “party opponent” and “opposing party” or between the various formulations of civil and criminal action/case/proceeding.

The restyled rules minimize the use of inherently ambiguous words. For example, the word “shall” can mean “must,” “may,” or something else, depending on context. The potential for confusion is exacerbated by the fact the word “shall” is no longer generally used in spoken or clearly written English. The restyled rules replace “shall” with “must,” “may,” or “should,” depending on which one the context and established interpretation make correct in each rule.

The restyled rules minimize the use of redundant “intensifiers.” These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning. See, e.g., Rule 104(c) (omitting “in all cases”); Rule 602 (omitting “but need not”); Rule 611(b) (omitting “in the exercise of discretion”).

The restyled rules also remove words and concepts that are outdated or redundant.

4. *Rule Numbers* — The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.

5. *No Substantive Change* — The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee considered a change to be “substantive” if any of the following conditions were met:

a. Under the existing practice in any circuit, the change could lead to a different result on a question of admissibility (e.g., a change that requires a court to provide either a less or more stringent standard in evaluating the admissibility of particular evidence);

b. Under the existing practice in any circuit, it could lead to a change in the procedure by which an admissibility decision is made (e.g., a change in the time in which an objection must be made, or a change in whether a court must hold a hearing on an admissibility question);

c. The change would restructure a rule in a way that would alter the approach that courts and litigants have used to think about, and argue about, questions of admissibility (e.g., merging Rules 104(a) and 104(b) into a single subdivision); or

d. The amendment would change a “sacred phrase” — one that has become so familiar in practice that to alter it would be unduly disruptive to practice and expectations. Examples in the Evidence Rules include “unfair prejudice” and “truth of the matter asserted.”

### Rule 102. Purpose.

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 102 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### Rule 103. Rulings on Evidence.

(a) *Preserving a Claim of Error.* A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context; or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) *Not Needing to Renew an Objection or Offer of Proof.* Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) *Court's Statement About the Ruling; Directing an Offer of Proof.* The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) *Preventing the Jury from Hearing Inadmissible Evidence.* To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) *Taking Notice of Plain Error.* A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

(Amended by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 103 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### Rule 104. Preliminary Questions.

(a) *In General.* The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

(b) *Relevance That Depends on a Fact.* When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) *Conducting a Hearing So That the Jury Cannot Hear It.* The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

(1) the hearing involves the admissibility of a confession;

(2) a defendant in a criminal case is a witness and so requests; or

(3) justice so requires.

(d) *Cross-Examining a Defendant in a Criminal Case.* By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

(e) *Evidence Relevant to Weight and Credibility.* This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 104 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes.**

If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 105 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 106. Remainder of or Related Writings or Recorded Statements.**

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 106 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

## **II. JUDICIAL NOTICE**

### **Rule 201. Judicial Notice of Adjudicative Facts.**

(a) *Scope.* This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) *Kinds of Facts That May Be Judicially Noticed.* The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or



(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) *Taking Notice*. The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) *Timing*. The court may take judicial notice at any stage of the proceeding.

(e) *Opportunity to Be Heard*. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) *Instructing the Jury*. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 201 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### III. PRESUMPTIONS IN CIVIL CASES

#### Rule 301. Presumptions in Civil Cases Generally.

In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 301 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### Rule 302. Applying State Law to Presumptions in Civil Cases.

In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.

(Amended by order adopted April 26, 2011, December 1, 2011.)

#### COMMENT

The language of Rule 302 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### IV. RELEVANCE AND ITS LIMITS

#### Rule 401. Test for Relevant Evidence.

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 401 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 402. General Admissibility of Relevant Evidence.**

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 402 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 403 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 404. Character Evidence; Crimes or Other Acts.**

#### **(a) Character Evidence.**

(1) *Prohibited Uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) *Exceptions for a Defendant or Victim in a Criminal Case.* The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

- (i) offer evidence to rebut it; and
- (ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) *Exceptions for a Witness.* Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) *Crimes, Wrongs, or Other Acts.*

(1) *Prohibited Uses.* Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses; Notice in a Criminal Case.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial — or during trial if the court, for good cause, excuses lack of pretrial notice.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 30, 1991, effective December 1, 1991, by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 12, 2006, effective December 1, 2006, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 404 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### Rule 405. Methods of Proving Character.

(a) *By Reputation or Opinion.* When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) *By Specific Instances of Conduct.* When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 405 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### Rule 406. Habit; Routine Practice.

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the



habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 406 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### Rule 407. Subsequent Remedial Measures.

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

(Amended by order adopted April 11, 1997, effective December 1, 1997, by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 407 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

### Rule 408. Compromise Offers and Negotiations.

(a) *Prohibited uses.* Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) *Exceptions.* The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

(Amended by order adopted April 12, 2006, effective December 1, 2006, by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 408 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

The Committee deleted the reference to “liability” on the ground that the deletion makes the Rule flow better and easier to read, and because “liability” is covered by the broader term “validity.” Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in current practice or in the coverage of the Rule is intended.

### **Rule 409. Offers to Pay Medical and Similar Expenses.**

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 409 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 410. Pleas, Plea Discussions, and Related Statements.**

(a) *Prohibited uses.* In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) *Exceptions.* The court may admit a statement described in Rule 410(a)(3) or (4):

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

(Amended by order adopted December 12, 1975, and by order adopted April 30, 1979, effective December 1, 1980, by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 410 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent



throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 411. Liability Insurance.**

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

### **COMMENT**

The language of Rule 411 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 411 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

### **Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition.**

(a) *Prohibited Uses.* The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

- (1) evidence offered to prove that a victim engaged in other sexual behavior; or
- (2) evidence offered to prove a victim's sexual predisposition.

(b) *Exceptions.*

(1) *Criminal Cases.* The court may admit the following evidence in a criminal case:

(A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and

(C) evidence whose exclusion would violate the defendant's constitutional rights.

(2) *Civil Cases.* In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.

(c) *Procedure to Determine Admissibility.*

(1) *Motion.* If a party intends to offer evidence under Rule 412(b), the party must:

(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) do so at least 14 days before trial unless the court, for good cause, sets a different time;

(C) serve the motion on all parties; and

(D) notify the victim or, when appropriate, the victim's guardian or representative.

(2) *Hearing.* Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the



court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.

(d) *Definition of "Victim."* In this rule, "victim" includes an alleged victim.

(Added by order adopted October 28, 1978, effective November 28, 1978, amended by P.L.100-690, § 7046, signed November 18, 1988, by order adopted April 29, 1994, effective December 1, 1994, and by P.L.103-322, approved September 13, 1994, effective December 1, 1994, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 412 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### Rule 413. Similar Crimes in Sexual-Assault Cases.

(a) *Permitted Uses.* In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.

(b) *Disclosure to the Defendant.* If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) *Effect on Other Rules.* This rule does not limit the admission or consideration of evidence under any other rule.

(d) *Definition of "Sexual Assault."* In this rule and Rule 415, "sexual assault" means a crime under federal law or under state law (as "state" is defined in 18 U.S.C. § 513) involving:

- (1) any conduct prohibited by 18 U.S.C. chapter 109A;
- (2) contact, without consent, between any part of the defendant's body — or an object — and another person's genitals or anus;
- (3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;
- (4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or
- (5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

(Added by P.L. 103-322, approved September 13, 1994, effective July 9, 1995, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 413 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### Rule 414. Similar Crimes in Child-Molestation Cases.

(a) *Permitted Uses.* In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

(b) *Disclosure to the Defendant.* If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) *Effect on Other Rules.* This rule does not limit the admission or consideration of evidence under any other rule.

(d) *Definition of “Child” and “Child Molestation.”* In this rule and Rule 415:

(1) “child” means a person below the age of 14; and

(2) “child molestation” means a crime under federal law or under state law (as “state” is defined in 18 U.S.C. § 513) involving:

(A) any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;

(B) any conduct prohibited by 18 U.S.C. chapter 110;

(C) contact between any part of the defendant’s body — or an object — and a child’s genitals or anus;

(D) contact between the defendant’s genitals or anus and any part of a child’s body;

(E) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

(F) an attempt or conspiracy to engage in conduct described in subparagraphs (A)-(E).

(Added by P.L. 103-322, approved September 13, 1994, effective July 9, 1995, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 414 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation.**

(a) *Permitted Uses.* In a civil case involving a claim for relief based on a party’s alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules 413 and 414.

(b) *Disclosure to the Opponent.* If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses’ statements or a summary of the expected testimony. The party must do so at least 15 days before trial or at a later time that the court allows for good cause.

(c) *Effect on Other Rules.* This rule does not limit the admission or consideration of evidence under any other rule.

(Added by P.L. 103-322, approved September 13, 1994, effective July 9, 1995, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 415 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

## **V. PRIVILEGES**

### **Rule 501. Privilege in General.**

The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:

- the United States Constitution;
- a federal statute; or
- rules prescribed by the Supreme Court.

But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 501 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver.**

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

(a) *Disclosure Made in a Federal Proceeding or to a Federal Office or Agency; Scope of a Waiver.* When the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

(b) *Inadvertent Disclosure.* When made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

(c) *Disclosure Made in a State Proceeding.* When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure:

- (1) would not be a waiver under this rule if it had been made in a federal proceeding; or
- (2) is not a waiver under the law of the state where the disclosure occurred.

(d) *Controlling Effect of a Court Order.* A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other federal or state proceeding.

(e) *Controlling Effect of a Party Agreement.* An agreement on the effect of disclosure in a federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

(f) *Controlling Effect of this Rule.* Notwithstanding Rules 101 and 1101, this rule applies to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

(g) *Definitions.* In this rule:

- (1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and



(2) “work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

(Added Sept. 19, 2008, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

Rule 502 has been amended by changing the initial letter of a few words from uppercase to lowercase as part of the restyling of the Evidence Rules to make style and terminology consistent throughout the rules. There is no intent to change any result in any ruling on evidence admissibility.

### VI. WITNESSES

#### **Rule 601. Competency to Testify in General.**

Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness’s competency regarding a claim or defense for which state law supplies the rule of decision.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 601 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 602. Need for Personal Knowledge.**

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony under Rule 703.

(Amended by order adopted March 2, 1987, effective October 1, 1987, and by order adopted April 25, 1988, effective November 1, 1988, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 602 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 603. Oath or Affirmation to Testify Truthfully.**

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness’s conscience.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 603 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 604. Interpreter.**

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 604 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 605. Judge's Competency as a Witness.**

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 605 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 606. Juror's Competency as a Witness.**

(a) *At the Trial.* A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) *During an Inquiry into the Validity of a Verdict or Indictment.*

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form.

(Amended by order adopted December 12, 1975, by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 12, 2006, effective December 1, 2006, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 606 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 607. Who May Impeach a Witness.**

Any party, including the party that called the witness, may attack the witness's credibility.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 607 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 608. A Witness's Character for Truthfulness or Untruthfulness.**

(a) *Reputation or Opinion Evidence.* A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) *Specific Instances of Conduct.* Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 25, 1988, effective November 1, 1988, by order adopted March 27, 2003, effective December 1, 2003, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 608 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee is aware that the Rule's limitation of bad-act impeachment to "cross-examination" is trumped by Rule 607, which allows a party to impeach witnesses on direct examination. Courts have not relied on the term "on cross-examination" to limit impeachment that would otherwise be permissible under Rules 607 and 608. The Committee therefore concluded that no change to the language of the Rule was necessary in the context of a restyling project.



**Rule 609. Impeachment by Evidence of a Criminal Conviction.**

(a) *In General.* The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

(b) *Limit on Using the Evidence After 10 Years.* This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) *Effect of a Pardon, Annulment, or Certificate of Rehabilitation.* Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) *Juvenile Adjudications.* Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) *Pendency of an Appeal.* A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted January 26, 1990, effective December 1, 1990, by order adopted April 12, 2006, effective December 1, 2006, and by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 609 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 610. Religious Beliefs or Opinions.**

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 610 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence.**

(a) *Control by the Court; Purposes.* The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

(b) *Scope of Cross-Examination.* Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

(c) *Leading Questions.* Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(Amended by order adopted March 2, 1987, effective October 1, 1987, and by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 611 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 612. Writing Used to Refresh a Witness's Memory.**

(a) *Scope.* This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

- (1) while testifying; or
- (2) before testifying, if the court decides that justice requires the party to have those options.

(b) *Adverse Party's Options; Deleting Unrelated Matter.* Unless 18 U.S.C. § 3500 provides otherwise in a criminal case, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) *Failure to Produce or Deliver the Writing.* If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.

(Amended by order adopted March 2, 1987, effective October 1, 1987, and by order adopted April 26, 2011, effective December 1, 2011.)



**COMMENT**

The language of Rule 612 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 613. Witness's Prior Statement.**

(a) *Showing or Disclosing the Statement During Examination.* When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) *Extrinsic Evidence of a Prior Inconsistent Statement.* Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 25, 1988, effective November 1, 1988, and by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 613 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 614. Court's Calling or Examining a Witness.**

(a) *Calling.* The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

(b) *Examining.* The court may examine a witness regardless of who calls the witness.

(c) *Objections.* A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 614 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 615. Excluding Witnesses.**

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

(a) a party who is a natural person;

(b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;

(c) a person whose presence a party shows to be essential to presenting the party's claim or defense; or

(d) a person authorized by statute to be present.



(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 25, 1988, effective November 1, 1988, by P.L. 100-690, § 7075, effective November 18, 1988, by order adopted April 24, 1998, effective December 1, 1998, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 615 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

## VII. OPINIONS AND EXPERT TESTIMONY

### Rule 701. Opinion Testimony by Lay Witnesses.

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 701 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee deleted all reference to an "inference" on the grounds that the deletion made the Rule flow better and easier to read, and because any "inference" is covered by the broader term "opinion." Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

### Rule 702. Testimony by Expert Witnesses.

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

(Amended by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 702 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent

throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 703. Bases of an Expert's Opinion Testimony.**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 26, 2011, effective December 1, 2011.)

#### **COMMENT**

The language of Rule 703 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee deleted all reference to an “inference” on the grounds that the deletion made the Rule flow better and easier to read, and because any “inference” is covered by the broader term “opinion.” Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

### **Rule 704. Opinion on an Ultimate Issue.**

(a) *In General — Not Automatically Objectionable.* An opinion is not objectionable just because it embraces an ultimate issue.

(b) *Exception.* In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

(Amended by P.L. 98-473, Title II, § 406, approved October 12, 1984, and by order adopted April 26, 2011, effective December 1, 2011.)

#### **COMMENT**

The language of Rule 704 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee deleted all reference to an “inference” on the grounds that the deletion made the Rule flow better and easier to read, and because any “inference” is covered by the broader term “opinion.” Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

### **Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion.**

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 26, 2011, effective December 1, 2011.)

## COMMENT

The language of Rule 705 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The Committee deleted all reference to an “inference” on the grounds that the deletion made the Rule flow better and easier to read, and because any “inference” is covered by the broader term “opinion.” Courts have not made substantive decisions on the basis of any distinction between an opinion and an inference. No change in current practice is intended.

**Rule 706. Court-Appointed Expert Witnesses.**

(a) *Appointment Process.* On a party’s motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

(b) *Expert’s Role.* The court must inform the expert of the expert’s duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

- (1) must advise the parties of any findings the expert makes;
- (2) may be deposed by any party;
- (3) may be called to testify by the court or any party; and
- (4) may be cross-examined by any party, including the party that called the expert.

(c) *Compensation.* The expert is entitled to a reasonable compensation, as set by the court. The compensation is payable as follows:

- (1) in a criminal case or in a civil case involving just compensation under the Fifth Amendment, from any funds that are provided by law; and
- (2) in any other civil case, by the parties in the proportion and at the time that the court directs — and the compensation is then charged like other costs.

(d) *Disclosing the Appointment to the Jury.* The court may authorize disclosure to the jury that the court appointed the expert.

(e) *Parties’ Choice of Their Own Experts.* This rule does not limit a party in calling its own experts.

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 26, 2011, effective December 1, 2011.)

## COMMENT

The language of Rule 706 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**VIII. HEARSAY****Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay.**

(a) *Statement.* “Statement” means a person’s oral assertion, written assertion, or non-verbal conduct, if the person intended it as an assertion.

(b) *Declarant.* “Declarant” means the person who made the statement.

(c) *Hearsay.* “Hearsay” means a statement that:

- (1) the declarant does not make while testifying at the current trial or hearing; and
- (2) a party offers in evidence to prove the truth of the matter asserted in the statement.



(d) *Statements That Are Not Hearsay.* A statement that meets the following conditions is not hearsay:

(1) *A Declarant-Witness's Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

(2) *An Opposing Party's Statement.* The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) was one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

(Amended by order adopted October 16, 1975, effective October 31, 1975, and by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 11, 1997, effective December 1, 1997, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 801 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Statements falling under the hearsay exclusion provided by Rule 801(d)(2) are no longer referred to as "admissions" in the title to the subdivision. The term "admissions" is confusing because not all statements covered by the exclusion are admissions in the colloquial sense — a statement can be within the exclusion even if it "admitted" nothing and was not against the party's interest when made. The term "admissions" also raises confusion in comparison with the Rule 804(b)(3) exception for declarations against interest. No change in application of the exclusion is intended.

#### Rule 802. The Rule Against Hearsay.

Hearsay is not admissible unless any of the following provides otherwise:

- a federal statute;
- these rules; or
- other rules prescribed by the Supreme Court.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 802 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 803. Exceptions to the Rule Against Hearsay — Regardless of Whether the Declarant Is Available as a Witness.**

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present Sense Impression.* A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) *Excited Utterance.* A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) *Then-Existing Mental, Emotional, or Physical Condition.* A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) *Statement Made for Medical Diagnosis or Treatment.* A statement that:

(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) *Recorded Recollection.* A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) *Records of a Regularly Conducted Activity.* A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) *Absence of a Record of a Regularly Conducted Activity.* Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) *Public Records.* A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

(9) *Public Records of Vital Statistics.* A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.



(10) *Absence of a Public Record.* Testimony — or a certification under Rule 902 — that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) *Records of Religious Organizations Concerning Personal or Family History.* A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) *Certificates of Marriage, Baptism, and Similar Ceremonies.* A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

(13) *Family Records.* A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) *Records of Documents That Affect an Interest in Property.* The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

(15) *Statements in Documents That Affect an Interest in Property.* A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose — unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

(16) *Statements in Ancient Documents.* A statement in a document that is at least 20 years old and whose authenticity is established.

(17) *Market Reports and Similar Commercial Publications.* Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) *Statements in Learned Treatises, Periodicals, or Pamphlets.* A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(19) *Reputation Concerning Personal or Family History.* A reputation among a person's family by blood, adoption, or marriage — or among a person's associates or in the community — concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) *Reputation Concerning Boundaries or General History.* A reputation in a community — arising before the controversy — concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) *Reputation Concerning Character.* A reputation among a person's associates or in the community concerning the person's character.

(22) *Judgment of a Previous Conviction.* Evidence of a final judgment of conviction if:



(A) the judgment was entered after a trial or guilty plea, but not a *nolo contendere* plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

(23) *Judgments Involving Personal, Family, or General History, or a Boundary.* A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

(24) [*Other Exceptions*]. [Transferred to Rule 807.]

(Amended by order adopted December 12, 1975, and by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 11, 1997, effective December 1, 1997, by order adopted April 17, 2000, effective December 1, 2000, and by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 803 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 804. Exceptions to the Rule Against Hearsay — When the Declarant Is Unavailable as a Witness.**

(a) *Criteria for Being Unavailable.* A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) *The Exceptions.* The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony.* Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) *Statement Under the Belief of Imminent Death.* In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) *Statement of Personal or Family History.* A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) [*Other Exceptions.*] [Transferred to Rule 807.]

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.* A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

(Amended by order adopted December 12, 1975, by order adopted March 2, 1987, effective October 1, 1987, and by P.L. 100-690, § 7075, effective November 18, 1988, by order adopted April 11, 1997, effective December 1, 1997; amended, effective December 1, 2010, and by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

**Subdivision (b)(3).** Rule 804(b)(3) has been amended to provide that the corroborating circumstances requirement applies to all declarations against penal interest offered in criminal cases. A number of courts have applied the corroborating circumstances requirement to declarations against penal interest offered by the prosecution, even though the text of the Rule did not so provide. *See, e.g., United States v. Alvarez*, 584 F.2d 694, 701 (5th Cir. 1978) (“by transplanting the language governing exculpatory statements onto the analysis for admitting inculpatory hearsay, a unitary standard is derived which offers the most workable basis for applying Rule 804(b)(3)”); *United States v. Shukri*, 207 F.3d 412 (7th Cir. 2000) (requiring corroborating circumstances for against-penal-interest statements offered by the government). A unitary approach to declarations against penal interest assures both the prosecution and the accused that the Rule will not be abused and that only reliable hearsay statements will be admitted under the exception.

All other changes to the structure and wording of the Rule are intended to be stylistic only. There is no intent to change any other result in any ruling on evidence admissibility.

The amendment does not address the use of the corroborating circumstances for declarations against penal interest offered in civil cases.

In assessing whether corroborating circumstances exist, some courts have focused on the credibility of the witness who relates the hearsay statement in court. But the credibility of the witness who relates the statement is not a proper factor for the court to consider in assessing corroborating circumstances. To base admission or exclusion of a hearsay statement on the witness's credibility would usurp the jury's role of determining the credibility of testifying witnesses.



The rule, as submitted for public comment, was restyled in accordance with the style conventions of the Style Subcommittee of the Committee on Rules of Practice and Procedure. As restyled, the proposed amendment addresses the style suggestions made in public comments.

The proposed Committee Note was amended to add a short discussion on applying the corroborating circumstances requirement. [12/1/10]

The language of Rule 804 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

No style changes were made to Rule 804(b)(3), because it was already restyled in conjunction with a substantive amendment, effective December 1, 2010.

### **Rule 805. Hearsay Within Hearsay.**

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### **COMMENT**

The language of Rule 805 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 806. Attacking and Supporting the Declarant's Credibility.**

When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

(Amended by order adopted March 2, 1987, effective October 1, 1987, April 11, 1997, effective December 1, 1997, by order adopted April 26, 2011, effective December 1, 2011.)

#### **COMMENT**

The language of Rule 806 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **Rule 807. Residual Exception.**

(a) *In General.* Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Rule 803 or 804:

- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
- (2) it is offered as evidence of a material fact;
- (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
- (4) admitting it will best serve the purposes of these rules and the interests of justice.



(b) *Notice.* The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

(Added April 11, 1997, effective December, 1997, amended by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 807 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

## IX. AUTHENTICATION AND IDENTIFICATION

### Rule 901. Authenticating or Identifying Evidence.

(a) *In General.* To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) *Examples.* The following are examples only — not a complete list — of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert Opinion About Handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an Expert Witness or the Trier of Fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion About a Voice.* An opinion identifying a person's voice — whether heard firsthand or through mechanical or electronic transmission or recording — based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence About a Telephone Conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence About Public Records.* Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence About Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or Rule.* Any method of authentication or identification allowed by a federal statute or a rule prescribed by the Supreme Court.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The language of Rule 901 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### Rule 902. Evidence That Is Self-Authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

- (1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:
  - (A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and
  - (B) a signature purporting to be an execution or attestation.
- (2) *Domestic Public Documents That Are Not Sealed but Are Signed and Certified.* A document that bears no seal if:
  - (A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and
  - (B) another public officer who has a seal and official duties within that same entity certifies under seal — or its equivalent — that the signer has the official capacity and that the signature is genuine.
- (3) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester — or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:
  - (A) order that it be treated as presumptively authentic without final certification; or
  - (B) allow it to be evidenced by an attested summary with or without final certification.
- (4) *Certified Copies of Public Records.* A copy of an official record — or a copy of a document that was recorded or filed in a public office as authorized by law — if the copy is certified as correct by:
  - (A) the custodian or another person authorized to make the certification; or
  - (B) a certificate that complies with Rule 902(1), (2), or (3), a federal statute, or a rule prescribed by the Supreme Court.
- (5) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.
- (6) *Newspapers and Periodicals.* Printed material purporting to be a newspaper or periodical.
- (7) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.
- (8) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.
- (9) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions Under a Federal Statute.* A signature, document, or anything else that a federal statute declares to be presumptively or prima facie genuine or authentic.

(11) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

(12) *Certified Foreign Records of a Regularly Conducted Activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a federal statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(Amended by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 25, 1988, effective November 1, 1988, by order adopted April 17, 2000, effective December 1, 2000, by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 902 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 903. Subscribing Witness's Testimony.**

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

(As amended Apr. 26, 2011, eff. Dec. 1, 2011.)

#### COMMENT

The language of Rule 903 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

### **X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS**

#### **Rule 1001. Definitions That Apply to This Article.**

In this article:

(a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

(b) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A "photograph" means a photographic image or its equivalent stored in any form.

(d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout — or other output readable by sight — if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.



(e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 1001 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 1002. Requirement of the Original.**

An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 1002 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 1003. Admissibility of Duplicates.**

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

The language of Rule 1003 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

#### **Rule 1004. Admissibility of Other Evidence of Content.**

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

(Amended by order adopted March 2, 1987, effective October 1, 1987, and by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 1004 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 1005. Copies of Public Records to Prove Content.**

The proponent may use a copy to prove the content of an official record — or of a document that was recorded or filed in a public office as authorized by law — if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 1005 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 1006. Summaries to Prove Content.**

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 1006 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 1007. Testimony or Statement of a Party to Prove Content.**

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

(Amended by order adopted March 2, 1987, effective October 1, 1987, and by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 1007 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 1008. Functions of the Court and Jury.**

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines — in accordance with Rule 104(b) — any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 1008 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**XI. MISCELLANEOUS RULES****Rule 1101. Applicability of Rules.**

- (a) *To Courts and Judges.* These rules apply to proceedings before:
  - United States district courts;
  - United States bankruptcy and magistrate judges;
  - United States courts of appeals;
  - the United States Court of Federal Claims; and
  - the district courts of Guam, the Virgin Islands, and the Northern Mariana Islands.
- (b) *To Cases and Proceedings.* These rules apply in:
  - civil cases and proceedings, including bankruptcy, admiralty, and maritime cases;
  - criminal cases and proceedings; and
  - contempt proceedings, except those in which the court may act summarily.
- (c) *Rules on Privilege.* The rules on privilege apply to all stages of a case or proceeding.
- (d) *Exceptions.* These rules — except for those on privilege — do not apply to the following:
  - (1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
  - (2) grand-jury proceedings; and
  - (3) miscellaneous proceedings such as:
    - extradition or rendition;
    - issuing an arrest warrant, criminal summons, or search warrant;
    - a preliminary examination in a criminal case;
    - sentencing;
    - granting or revoking probation or supervised release; and
    - considering whether to release on bail or otherwise.
- (e) *Other Statutes and Rules.* A federal statute or a rule prescribed by the Supreme Court may provide for admitting or excluding evidence independently from these rules.

(Amended by order adopted December 12, 1975, by P.L. 95-598, title II, § 251(b), adopted November 6, 1978, effective October 1, 1979, by P.L. 97-164, adopted April 2, 1982, effective October 1, 1982, by order adopted March 2, 1987, effective October 1, 1987, by order adopted April 25, 1988, effective November 1, 1988, by P.L. 100-690, § 7075, signed November 18, 1988, by order adopted April 22, 1993, effective December 1, 1993, and by order adopted April 26, 2011, effective December 1, 2011.)



**COMMENT**

The language of Rule 1101 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 1102. Amendments.**

These rules may be amended as provided in 28 U.S.C. § 2072.

(Amended by order adopted April 30, 1991, effective December 1, 1991, and by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 1102 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Rule 1103. Title.**

These rules may be cited as the Federal Rules of Evidence.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

**COMMENT**

The language of Rule 1103 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.



# **FEDERAL RULES OF BANKRUPTCY PROCEDURE**

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As amended to December 1, 2012



THEORY OF  
OF  
THEORY OF

THEORY OF

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# FEDERAL RULES OF BANKRUPTCY PROCEDURE

## **Rule 1001. Scope of Rules and Forms; Short Title.**

The Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code. The rules shall be cited as the Federal Rules of Bankruptcy Procedure and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.

## **PART I — COMMENCEMENT OF CASE: PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF**

### **Rule 1002. Commencement of Case.**

#### **(a) *Petition.***

A petition commencing a case under the Code shall be filed with the clerk.

#### **(b) *Transmission to United States trustee.***

The clerk shall forthwith transmit to the United States trustee a copy of the petition filed pursuant to subdivision (a) of this rule.

### **Rule 1003. Involuntary Petition.**

#### **(a) *Transferor or transferee of claim.***

A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

#### **(b) *Joinder of petitioners after filing.***

If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

### **Rule 1004. Involuntary Petition Against a Partnership.**

After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall promptly send to or serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

### **Rule 1004.1. Petition for an Infant or Incompetent Person.**

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person

who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

#### **Rule 1004.2. Petition in Chapter 15 Cases.**

(a) *Designating Center of Main Interests.* A petition for recognition of a foreign proceeding under chapter 15 of the Code shall state the country where the debtor has its center of main interests. The petition shall also identify each country in which a foreign proceeding by, regarding, or against the debtor is pending.

(b) *Challenging Designation.* The United States trustee or a party in interest may file a motion for a determination that the debtor's center of main interests is other than as stated in the petition for recognition commencing the chapter 15 case. Unless the court orders otherwise, the motion shall be filed no later than seven days before the date set for the hearing on the petition. The motion shall be transmitted to the United States trustee and served on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor was a party as of the time the petition was filed, and such other entities as the court may direct.

(Added by order adopted April 26, 2011, effective December 1, 2011.)

#### **COMMENT**

This rule is new. Subdivision (a) directs any entity that files a petition for recognition of a foreign proceeding under chapter 15 of the Code to state in the petition the center of the debtor's main interests. The petition must also list each country in which a foreign proceeding involving the debtor is pending. This information will assist the court and parties in interest in determining whether the foreign proceeding is a foreign main or nonmain proceeding.

Subdivision (b) sets a deadline of seven days prior to the hearing on the petition for recognition for filing a motion challenging the statement in the petition regarding the country in which the debtor's center of main interests is located.

#### **Rule 1005. Caption of Petition.**

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the following information about the debtor: name, employer identification number, last four digits of the social-security number or individual debtor's taxpayer-identification number, any other federal taxpayer-identification number, and all other names used within eight years before filing the petition. If the petition is not filed by the debtor, it shall include all names used by the debtor which are known to the petitioners.

(Amended, effective December 1, 2008.)

#### **COMMENT**

The rule is amended to require the disclosure of all names used by the debtor in the past eight years. Section 727(a)(8) was amended in 2005 to extend the time between chapter 7 discharges from six to eight years, and the rule is amended to implement that change. The rule also is amended to require the disclosure of the last four digits of an individual debtor's taxpayer-identification number. This truncation of the number applies only to individual debtors. This is consistent with the requirements of Rule 9037. [12/1/08]

#### **Rule 1006. Filing Fee.**

(a) *General Requirement.* Every petition shall be accompanied by the filing fee except as provided in subdivisions (b) and (c) of this rule. For the purpose of this rule, "filing fee"



means the filing fee prescribed by 28 U.S.C. § 1930(a)(1)-(a)(5) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code.

(b) *Payment of Filing Fee in Installments.*

(1) *Application to Pay Filing Fee in Installments.* A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application, prepared as prescribed by the appropriate Official Form, stating that the debtor is unable to pay the filing fee except in installments.

(2) *Action on Application.* Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) *Postponement of Attorney's Fees.* All installments of the filing fee must be paid in full before the debtor or chapter 13 trustee may make further payments to an attorney or any other person who renders services to the debtor in connection with the case.

(c) *Waiver of Filing Fee.* A voluntary chapter 7 petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. § 1930(f), prepared as prescribed by the appropriate Official Form.

(Amended Aug. 1, 1987; Dec. 1, 1996; October 17, 2005; December 1, 2008.)

#### COMMENT

Subdivision (a) is amended to include a reference to new subdivision (c), which deals with fee waivers under 28 U.S.C. § 1930(f), which was added in 2005.

Subdivision (b)(1) is amended to delete the sentence requiring a disclosure that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver under the 2005 revisions to 28 U.S.C. § 1930(f). If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. The deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than request a waiver.

Subdivision (b)(3) is amended in conformance with the changes to subdivision (b)(1) to reflect the 2005 amendments. The change is meant to clarify that subdivision (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, the subdivision may conflict with the intent and effect of the amendments to subdivision (b)(1). [12/1/08]

#### **Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits.**

(a) *Corporate Ownership Statement, List of Creditors and Equity Security Holders, and Other Lists.*

(1) *Voluntary Case.* In a voluntary case, the debtor shall file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H as prescribed by the Official Forms. If the debtor is a corporation, other than a governmental unit, the debtor shall file with the petition a corporate ownership statement containing the information described in Rule 7007.1. The debtor shall file a supplemental statement promptly upon any change in circumstances that renders the corporate ownership statement inaccurate.

(2) *Involuntary Case.* In an involuntary case, the debtor shall file, within seven days after entry of the order for relief, a list containing the name and address of each entity included or to be included on Schedules D, E, F, G, and H as prescribed by the Official Forms.



(3) *Equity Security Holders.* In a chapter 11 reorganization case, unless the court orders otherwise, the debtor shall file within 14 days after entry of the order for relief a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder.

(4) *Chapter 15 Case.* In addition to the documents required under § 1515 of the Code, a foreign representative filing a petition for recognition under chapter 15 shall file with the petition: (A) a corporate ownership statement containing the information described in Rule 7007.1; and (B) unless the court orders otherwise, a list containing the names and addresses of all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and all entities against whom provisional relief is being sought under § 1519 of the Code.

(5) *Extension of Time.* Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to the United States trustee and to any trustee, committee elected under § 705 or appointed under § 1102 of the Code, or other party as the court may direct.

(b) *Schedules, Statements, and Other Documents Required.*

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file the following schedules, statements, and other documents, prepared as prescribed by the appropriate Official Forms, if any:

(A) schedules of assets and liabilities;

(B) a schedule of current income and expenditures;

(C) a schedule of executory contracts and unexpired leases;

(D) a statement of financial affairs;

(E) copies of all payment advices or other evidence of payment, if any, received by the debtor from an employer within 60 days before the filing of the petition, with redaction of all but the last four digits of the debtor's social-security number or individual taxpayer-identification number; and

(F) a record of any interest that the debtor has in an account or program of the type specified in § 521(c) of the Code.

(2) An individual debtor in a chapter 7 case shall file a statement of intention as required by § 521(a) of the Code, prepared as prescribed by the appropriate Official Form. A copy of the statement of intention shall be served on the trustee and the creditors named in the statement on or before the filing of the statement.

(3) Unless the United States trustee has determined that the credit counseling requirement of § 109(h) does not apply in the district, an individual debtor must file a statement of compliance with the credit counseling requirement, prepared as prescribed by the appropriate Official Form which must include one of the following:

(A) an attached certificate and debt repayment plan, if any, required by § 521(b);

(B) a statement that the debtor has received the credit counseling briefing required by § 109(h)(1) but does not have the certificate required by § 521(b);

(C) a certification under § 109(h)(3); or

(D) a request for a determination by the court under § 109(h)(4).

(4) Unless § 707(b)(2)(D) applies, an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form.

(5) An individual debtor in a chapter 11 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

(6) A debtor in a chapter 13 case shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, a calculation of disposable income made in accordance with § 1325(b)(3), prepared as prescribed by the appropriate Official Form.

(7) An individual debtor in a chapter 7 or chapter 13 case shall file a statement of completion of a course concerning personal financial management, prepared as prescribed by the appropriate Official Form. An individual debtor shall file the statement in a chapter 11 case in which § 1141(d)(3) applies.

(8) If an individual debtor in a chapter 11, 12, or 13 case has claimed an exemption under § 522(b)(3)(A) in property of the kind described in § 522(p)(1) with a value in excess of the amount set out in § 522(q)(1), the debtor shall file a statement as to whether there is any proceeding pending in which the debtor may be found guilty of a felony of a kind described in § 522(q)(1)(A) or found liable for a debt of the kind described in § 522(q)(1)(B).

(c) *Time Limits.* In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 14 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), and (h) of this rule. In an involuntary case, the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days after the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 14 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 60 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(d) *List of 20 Largest Creditors in Chapter 9 Municipality Case or Chapter 11 Reorganization Case.* In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.

(e) *List in Chapter 9 Municipality Cases.* The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9 municipality case within such time as the court shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the debtor shall also file a list showing the name and address of each known holder of title, legal or equitable, to real property adversely affected. On motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.

(f) *Statement of Social Security Number.* An individual debtor shall submit a verified statement that sets out the debtor's social security number, or states that the debtor does not have a social security number. In a voluntary case, the debtor shall submit the statement with the petition. In an involuntary case, the debtor shall submit the statement within 14 days after the entry of the order for relief.

(g) *Partnership and Partners.* The general partners of a debtor partnership shall prepare and file the list required under subdivision (a), the schedules of the assets and liabilities,



schedule of current income and expenditures, schedule of executory contracts and unexpired leases, and statement of financial affairs of the partnership. The court may order any general partner to file a statement of personal assets and liabilities within such time as the court may fix.

(h) *Interests Acquired or Arising After Petition.* If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case, except that the schedule need not be filed in a chapter 11, chapter 12, or chapter 13 case with respect to property acquired after entry of the order confirming a chapter 11 plan or discharging the debtor in a chapter 12 or chapter 13 case.

(i) *Disclosure of List of Security Holders.* After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.

(j) *Impounding of Lists.* On motion of a party in interest and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.

(k) *Preparation of List, Schedules, or Statements on Default of Debtor.* If a list, schedule, or statement, other than a statement of intention, is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.

(l) *Transmission to United States Trustee.* The clerk shall forthwith transmit to the United States trustee a copy of every list, schedule, and statement filed pursuant to subdivision (a)(1), (a)(2), (b), (d), or (h) of this rule.

(m) *Infants and Incompetent Persons.* If the debtor knows that a person on the list of creditors or schedules is an infant or incompetent person, the debtor also shall include the name, address, and legal relationship of any person upon whom process would be served in an adversary proceeding against the infant or incompetent person in accordance with Rule 7004(b)(2).

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1996; Dec. 1, 2001; Dec. 1, 2003; October 17, 2005; October 1, 2006; December 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009; amended, effective December 1, 2010; amended by order adopted April 23, 2012, effective December 1, 2012.)

#### COMMENT

The title of this rule is expanded to refer to "documents" in conformity with the 2005 amendments to § 521 and related provisions of the Bankruptcy Code that include a wider range of documentary requirements.

Subdivision (a) is amended to require that any foreign representative filing a petition for recognition to commence a case under chapter 15, which was added to the Code in 2005, file a list of entities with whom the debtor is engaged in litigation in the United States. The foreign representative filing the petition for recognition must also list any entities against whom provisional relief is being sought as well as all administrators in foreign proceedings



of the debtor. This should ensure that entities most interested in the case, or their representatives, will receive notice of the petition under Rule 2002(q).

Subdivision (a)(4) is amended to require the foreign representative who files a petition for recognition under chapter 15 to file the documents described in § 1515 of the Code as well as a corporate ownership statement. The subdivision is also amended to identify the foreign representative in language that more closely follows the text of the Code. Former subdivision (a)(4) is renumbered as subdivision (a)(5) and stylistic changes were made to the subdivision.

Subdivision (b)(1) addresses schedules, statements, and other documents that the debtor must file unless the court orders otherwise and other than in a case under chapter 9. This subdivision is amended to include documentary requirements added by the 2005 amendments to § 521 that apply to the same group of debtors and have the same time limits as the existing requirements of (b)(1). Consistent with the E-Government Act of 2002, Pub. L. No. 107-347, the payment advices should be redacted before they are filed.

Subdivision (b)(2) is amended to conform to the renumbering of the subsections of § 521.

Subdivisions (b)(3) through (b)(8) are new and implement the 2005 amendments to the Code. Subdivision (b)(3) provides for the filing of a document relating to the credit counseling requirement provided by the 2005 amendments to § 109 in the context of an Official Form that warns the debtor of the consequences of failing to comply with the credit counseling requirement.

Subdivision (b)(4) addresses the filing of information about current monthly income, as defined in § 101, for certain chapter 7 debtors and, if required, additional calculations of expenses required by the 2005 amendments to § 707(b).

Subdivision (b)(5) addresses the filing of information about current monthly income, as defined in § 101, for individual chapter 11 debtors. The 2005 amendments to § 1129(a)(15) condition plan confirmation for individual debtors on the commitment of disposable income, as defined in § 1325(b)(2), which is based on current monthly income.

Subdivision (b)(6) addresses the filing of information about current monthly income, as defined in § 101, for chapter 13 debtors and, if required, additional calculations of expenses. These changes are necessary because the 2005 amendments to § 1325 require that the determination of disposable income begin with current monthly income.

Subdivision (b)(7) reflects the 2005 amendments to §§ 727 and 1328 of the Code that condition the receipt of a discharge on the completion of a personal financial management course, with certain exceptions. Certain individual chapter 11 debtors may also be required to complete a personal financial management course under § 727(a)(11) as incorporated by § 1141(d)(3)(C). To evidence compliance with that requirement, the subdivision requires the debtor to file the appropriate Official Form certifying that the debtor has completed the personal financial management course.

Subdivision (b)(8) requires an individual debtor in a case under chapter 11, 12, or 13 to file a statement that there are no reasonable grounds to believe that the restrictions on a homestead exemption as set out in § 522(q) of the Code are applicable. Sections 1141(d)(5)(C), 1228(f), and 1328(h) each provide that the court shall not enter a discharge order unless it finds that there is no reasonable cause to believe that § 522(q) applies. Requiring the debtor to submit a statement to that effect in cases under chapters 11, 12, and 13 in which an exemption is claimed in excess of the amount allowed under § 522(q)(1) provides the court with a basis to conclude, in the absence of any contrary information, that § 522(q) does not apply. Creditors receive notice under Rule 2002(f)(11) of the time to request postponement of the entry of the discharge to permit an opportunity to challenge the debtor's assertions in the Rule 1007(b)(8) statement in appropriate cases.

Subdivision (c) is amended to include time limits for the filing requirements added to subdivision (b) due to the 2005 amendments to the Code, and to make conforming amendments. Separate time limits are provided for the documentation of credit counseling and for the statement of the completion of the financial management course. While most documents relating to credit counseling must be filed with the voluntary petition, the credit counseling certificate and debt repayment plan can be filed within 15 days of the filing of a voluntary petition if the debtor files a statement under subdivision (b)(3)(B) with the

petition. Sections 727(a)(11), 1141(d)(3), and 1328(g) of the Code require individual debtors to complete a personal financial management course prior to the entry of a discharge. The amendment allows the court to enlarge the deadline for the debtor to file the statement of completion. Because no party is harmed by the enlargement, no specific restriction is placed on the court's discretion to enlarge the deadline, even after its expiration.

Subdivision (c) of the rule is also amended to recognize the limitation on the extension of time to file schedules and statements when the debtor is a small business debtor. Section 1116(3), added to the Code in 2005, establishes a specific standard for courts to apply in the event that the debtor in possession or the trustee seeks an extension for filing these forms for a period beyond 30 days after the order for relief. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. Each deadline in the rule of fewer than 30 days is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Subdivision (a)(2).** Subdivision (a)(2) is amended to shorten the time for a debtor to file a list of the creditors included on the various schedules filed or to be filed in the case. This list provides the information necessary for the clerk to provide notice of the § 341 meeting of creditors in a timely manner.

**Subdivision (c).** Subdivision (c) is amended to provide additional time for individual debtors in chapter 7 to file the statement of completion of a course in personal financial management. This change is made in conjunction with an amendment to Rule 5009 requiring the clerk to provide notice to debtors of the consequences of not filing the statement in a timely manner. [12/1/10]

In subdivision (c), the time limit for a debtor in an involuntary case to file the list required by subdivision (a)(2) is deleted as unnecessary. Subdivision (a)(2) provides that the list must be filed within seven days after the entry of the order for relief. The other change to subdivision (c) is stylistic. [12/1/12]

**Editor's Notes.** A modified version of this rule has been adopted as Interim Rule 1007-I to implement a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. See <http://www.uscourts.gov/uscourts/rules/interim-rule-1007-I.pdf>.

### **Rule 1008. Verification of Petitions and Accompanying Papers.**

All petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.

### **Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements.**

(a) *General Right to Amend.* A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

(b) *Statement of Intention.* The statement of intention may be amended by the debtor at any time before the expiration of the period provided in § 521(a) of the Code. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

(c) *Statement of Social Security Number.* If a debtor becomes aware that the statement of social security number submitted under Rule 1007(f) is incorrect, the debtor shall promptly submit an amended verified statement setting forth the correct social security



number. The debtor shall give notice of the amendment to all of the entities required to be included on the list filed under Rule 1007(a)(1) or (a)(2).

(d) *Transmission to United States Trustee.* The clerk shall promptly transmit to the United States trustee a copy of every amendment filed or submitted under subdivision (a), (b), or (c) of this rule.

(Amended December 1, 2006.)

#### COMMENT

Subdivision (b) is amended to conform to the 2005 amendments to § 521 of the Code. [12/1/08]

### **Rule 1010. Service of Involuntary Petition and Summons; Petition for Recognition of a Foreign Nonmain Proceeding.**

(a) *Service of Involuntary Petition and Summons; Service of Petition for Recognition of Foreign Nonmain Proceeding.*

On the filing of an involuntary petition or a petition for recognition of a foreign nonmain proceeding, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. When a petition for recognition of a foreign nonmain proceeding is filed, service shall be made on the debtor, any entity against whom provisional relief is sought under § 1519 of the Code, and on any other party as the court may direct. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(l) F.R.Civ.P. apply when service is made or attempted under this rule.

(b) *Corporate Ownership Statement.* Each petitioner that is a corporation shall file with the involuntary petition a corporate ownership statement containing the information described in Rule 7007.1.

(Amended Aug. 1, 1987; Aug. 1, 1991; Aug. 1, 1993; Dec. 1, 1997; Oct. 17, 2005; Dec. 1, 2008.)

#### COMMENT

This rule is amended to implement the 2005 amendments to the Code, which repealed § 304 and replaced it with chapter 15 governing ancillary and other cross-border cases. Under chapter 15, a foreign representative commences a case by filing a petition for recognition of a pending foreign nonmain proceeding. The amendment requires service of the summons and petition on the debtor and any entity against whom the representative is seeking provisional relief. Until the court enters a recognition order under § 1517, no stay is in effect unless the court enters some form of provisional relief under § 1519. Thus, only those entities against whom specific provisional relief is sought need to be served. The court may, however, direct that service be made on additional entities as appropriate.

This rule does not apply to a petition for recognition of a foreign main proceeding.

The rule is also amended by renumbering the prior rule as subdivision (a) and adding a new subdivision (b) requiring any corporate creditor that files or joins an involuntary petition to file a corporate ownership statement. [12/1/08]

### **Rule 1011. Responsive Pleading or Motion in Involuntary and Cross-Border Cases.**

(a) *Who May Contest Petition.* The debtor named in an involuntary petition or a party in interest to a petition for recognition of a foreign proceeding, may contest the petition. In



the case of a petition against a partnership under Rule 1004, a nonpetitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

(b) *Defenses and Objections; When Presented.* Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F. R. Civ. P. and shall be filed and served within 21 days after service of the summons, except that if service is made by publication on a party or partner not residing or found within the state in which the court sits, the court shall prescribe the time for filing and serving the response.

(c) *Effect of Motion.* Service of a motion under Rule 12(b) F.R. Civ. P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F. R. Civ. P.

(d) *Claims Against Petitioners.* A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.

(e) *Other Pleadings.* No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.

(f) *Corporate Ownership Statement.* If the entity responding to the involuntary petition or the petition for recognition of a foreign proceeding is a corporation, the entity shall file with its first appearance, pleading, motion, response, or other request addressed to the court a corporate ownership statement containing the information described in Rule 7007.1.

(Amended Aug. 1, 1987; Dec. 1, 2004; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The rule is amended to reflect the 2005 amendments to the Code, which repealed § 304 and added chapter 15. Section 304 covered cases ancillary to foreign proceedings, while chapter 15 governs ancillary and other cross-border cases and introduces the concept of a petition for recognition of a foreign proceeding.

The rule is also amended in tandem with the amendment to Rule 1010 to require the parties responding to an involuntary petition and a petition for recognition of a foreign proceeding to file corporate ownership statements to assist the court in determining whether recusal is necessary. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 1012.** [Abrogated Mar. 30, 1987, eff. Aug. 1, 1987].

### **Rule 1013. Hearing and Disposition of a Petition in an Involuntary Case.**

(a) *Contested petition.*

The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order.

(b) *Default.*

If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition.

(c) [Abrogated]

(As amended Apr. 30, 1991, eff. Aug. 1, 1991; Apr. 22, 1993, eff. Aug. 1, 1993.)

**Rule 1014. Dismissal and Change of Venue.****(a) Dismissal and Transfer of cases.****(1) Cases filed in proper district.**

If a petition is filed in the proper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may transfer the case to any other district if the court determines that the transfer is in the interest of justice or for the convenience of the parties.

**(2) Cases filed in improper district.**

If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.

**(b) Procedure when petitions involving the same debtor or related debtors are filed in different courts.** If petitions commencing cases under the Code or seeking recognition under chapter 15 are filed in different districts by, regarding, or against (1) the same debtor, (2) a partnership and one or more of its general partners, (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the district in which the petition filed first is pending and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, the court may determine, in the interest of justice or for the convenience of the parties, the district or districts in which the case or cases should proceed. Except as otherwise ordered by the court in the district in which the petition filed first is pending, the proceedings on the other petitions shall be stayed by the courts in which they have been filed until the determination is made.

(Amended by order adopted April 30, 2007, effective December 1, 2007; amended, effective December 1, 2010.)

**COMMENT**

**Subdivision (b).** Subdivision (b) of the rule is amended to provide that petitions for recognition of a foreign proceeding are included among those that are governed by the procedure for determining where cases should go forward when multiple petitions involving the same debtor are filed. The amendment adds a specific reference to chapter 15 petitions and also provides that the rule governs proceedings regarding a debtor as well as those that are filed by or against a debtor.

Other changes are stylistic. [12/1/10]

**Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court.**

**(a) Cases involving same debtor.** If two or more petitions by, regarding, or against the same debtor are pending in the same court, the court may order consolidation of the cases.

**(b) Cases involving two or more related debtors.**

If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest. An order directing joint administration of individual cases of a husband and wife shall, if one spouse has elected the exemptions under § 522(b)(2) of the Code and the other has elected the exemptions under § 522(b)(3), fix a reasonable time within which either may amend the election so that both shall have elected the same exemptions. The order shall notify the debtors that unless they elect the same exemptions within the time fixed by the court, they will be deemed to have elected the exemptions provided by § 522(b)(2).

**(c) Expediting and protective orders.**



When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

(Amended Dec. 1, 2008; amended, effective December 1, 2010.)

#### COMMENT

**Subdivision (a).** By amending subdivision (a) to include cases regarding the same debtor, the rule explicitly recognizes that the court's authority to consolidate cases when more than one petition is filed includes the authority to consolidate cases when one or more of the petitions is filed under chapter 15. This amendment is made in conjunction with the amendment to Rule 1014(b), which also governs petitions filed under chapter 15 regarding the same debtor as well as those filed by or against the debtor. [12/1/10]

The rule is amended to conform to the change in the numbering of § 522(b) of the Code that was made as a part of the 2005 amendments. Former subsections (b)(1) and (b)(2) of § 522 were renumbered as subsections (b)(2) and (b)(3), respectively. The rule is amended to make the parallel change. [12/1/08]

#### Rule 1016. Death or Incompetency of Debtor.

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

#### Rule 1017. Dismissal or Conversion of Case; Suspension.

(a) *Voluntary Dismissal; Dismissal for Want of Prosecution or Other Cause.* Except as provided in §§ 707(a)(3), 707(b), 1208(b), and 1307(b) of the Code, and in Rule 1017(b), (c), and (e), a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on notice as provided in Rule 2002. For the purpose of the notice, the debtor shall file a list of creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the debtor or another entity to prepare and file it.

(b) *Dismissal for Failure to Pay Filing Fee.*

(1) If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case.

(2) If the case is dismissed or closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(c) *Dismissal of Voluntary Chapter 7 or Chapter 13 Case for Failure to Timely File List of Creditors, Schedules, and Statement of Financial Affairs.* The court may dismiss a voluntary chapter 7 or chapter 13 case under § 707(a)(3) or § 1307(c)(9) after a hearing on notice served by the United States trustee on the debtor, the trustee, and any other entities as the court directs.

(d) *Suspension.* The court shall not dismiss a case or suspend proceedings under § 305 before a hearing on notice as provided in Rule 2002(a).

(e) *Dismissal of an Individual Debtor's Chapter 7 Case, or Conversion to a Case Under Chapter 11 or 13, for Abuse.* The court may dismiss or, with the debtor's consent, convert an individual debtor's case for abuse under § 707(b) only on motion and after a hearing on



notice to the debtor, the trustee, the United States trustee, and any other entity as the court directs.

(1) Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss. The party filing the motion shall set forth in the motion all matters to be considered at the hearing. In addition, a motion to dismiss under § 707(b)(1) and (3) shall state with particularity the circumstances alleged to constitute abuse.

(2) If the hearing is set on the court's own motion, notice of the hearing shall be served on the debtor no later than 60 days after the first date set for the meeting of creditors under § 341(a). The notice shall set forth all matters to be considered by the court at the hearing.

(f) *Procedure for dismissal, conversion, or suspension.*

(1) Rule 9014 governs a proceeding to dismiss or suspend a case, or to convert a case to another chapter, except under §§ 706(a), 1112(a), 1208(a) or (b), or 1307(a) or (b).

(2) Conversion or dismissal under §§ 706(a), 1112(a), 1208(b), or 1307(b) shall be on motion filed and served as required by Rule 9013.

(3) A chapter 12 or chapter 13 case shall be converted without court order when the debtor files a notice of conversion under §§ 1208(a) or 1307(a). The filing date of the notice becomes the date of the conversion order for the purposes of applying § 348(c) and Rule 1019. The clerk shall promptly transmit a copy of the notice to the United States trustee.

(Amended Aug. 1, 1987; Aug. 1, 1991; Aug. 1, 1993; Dec. 1, 1999; Dec. 1, 2000; October 17, 2005; Dec. 1, 2008.)

### COMMENT

Subdivision (e) is amended to implement the 2005 amendments to § 707 of the Code. These statutory amendments permit conversion of a chapter 7 case to a case under chapter 11 or 13, change the basis for dismissal or conversion from "substantial abuse" to "abuse," authorize parties other than the United States trustee to bring motions under § 707(b) under certain circumstances, and add § 707(c) to create an explicit ground for dismissal based on the request of a victim of a crime of violence or drug trafficking. The conforming amendments to subdivision (e) preserve the time limits already in place for § 707(b) motions, except to the extent that § 704(b)(2) sets the deadline for the United States trustee to act. In contrast to the grounds for a motion to dismiss under § 707(b)(2), which are quite specific, the grounds under § 707(b)(1) and (3) are very general. Therefore, to enable the debtor to respond, subdivision (e) requires that motions to dismiss under § 707(b)(1) and (3) state with particularity the circumstances alleged to constitute abuse. [12/1/08]

### **Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings.**

Unless the court otherwise directs and except as otherwise prescribed in Part I of these rules, the following rules in Part VII apply to all proceedings contesting an involuntary petition or a chapter 15 petition for recognition, and to all proceedings to vacate an order for relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052, 7054, 7056, and 7062. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings contesting an involuntary petition or a chapter 15 petition for recognition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

(Amended, effective December 1, 2010.)

### COMMENT

The rule is amended to reflect the enactment of chapter 15 of the Code in 2005. As to chapter 15 cases, the rule applies to contests over the petition for recognition and not to all matters that arise in the case. Thus, proceedings governed by § 1519(e) and § 1521(e) of the Code must comply with Rules 7001(7) and 7065, which provide that actions for injunctive relief are adversary proceedings governed by Part VII of the rules. The rule is also amended to clarify that it applies to contests over an involuntary petition, and not to matters merely “relating to” a contested involuntary petition. Matters that may arise in a chapter 15 case or an involuntary case, other than contests over the petition itself, are governed by the otherwise applicable rules.

Other changes are stylistic. [12/1/10]

### **Rule 1019. Conversion of a Chapter 11 Reorganization Case, Chapter 12 Family Farmer’s Debt Adjustment Case, or Chapter 13 Individual’s Debt Adjustment Case to a Chapter 7 Liquidation Case.**

When a chapter 11, chapter 12, or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) *Filing of Lists, Inventories, Schedules, Statements.*

(A) Lists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(B) If a statement of intention is required, it shall be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier. The court may grant an extension of time for cause only on written motion filed, or oral request made during a hearing, before the time has expired. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(2) *New Filing Periods.*

(A) A new time period for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt shall commence under Rules 1017, 3002, 4004, or 4007, but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing a motion under § 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.

(B) A new time period for filing an objection to a claim of exemptions shall commence under Rule 4003(b) after conversion of a case to chapter 7 unless:

(i) the case was converted to chapter 7 more than one year after the entry of the first order confirming a plan under chapter 11, 12, or 13; or

(ii) the case was previously pending in chapter 7 and the time to object to a claimed exemption had expired in the original chapter 7 case.

(3) *Claims Filed Before Conversion.* All claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case.

(4) *Turnover of Records and Property.* After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11, 12, or 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in the possession or control of the debtor in possession or trustee.

(5) *Filing Final Report and Schedule of Postpetition Debts.*



(A) *Conversion of Chapter 11 or Chapter 12 Case.* Unless the court directs otherwise, if a chapter 11 or chapter 12 case is converted to chapter 7, the debtor in possession or, if the debtor is not a debtor in possession, the trustee serving at the time of conversion, shall:

(i) not later than 14 days after conversion of the case, file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) not later than 30 days after conversion of the case, file and transmit to the United States trustee a final report and account;

(B) *Conversion of Chapter 13 Case.* Unless the court directs otherwise, if a chapter 13 case is converted to chapter 7,

(i) the debtor, not later than 14 days after conversion of the case, shall file a schedule of unpaid debts incurred after the filing of the petition and before conversion of the case, including the name and address of each holder of a claim; and

(ii) the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account;

(C) *Conversion After Confirmation of a Plan.* Unless the court orders otherwise, if a chapter 11, chapter 12, or chapter 13 case is converted to chapter 7 after confirmation of a plan, the debtor shall file:

(i) a schedule of property not listed in the final report and account acquired after the filing of the petition but before conversion, except if the case is converted from chapter 13 to chapter 7 and § 348(f)(2) does not apply;

(ii) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before the conversion; and

(iii) a schedule of executory contracts and unexpired leases entered into or assumed after the filing of the petition but before conversion.

(D) *Transmission to United States Trustee.* The clerk shall forthwith transmit to the United States trustee a copy of every schedule filed pursuant to Rule 1019(5).

(6) *Postpetition Claims; Preconversion Administrative Expenses; Notice.* A request for payment of an administrative expense incurred before conversion of the case is timely filed under § 503(a) of the Code if it is filed before conversion or a time fixed by the court. If the request is filed by a governmental unit, it is timely if it is filed before conversion or within the later of a time fixed by the court or 180 days after the date of the conversion. A claim of a kind specified in § 348(d) may be filed in accordance with Rules 3001(a)-(d) and 3002. Upon the filing of the schedule of unpaid debts incurred after commencement of the case and before conversion, the clerk, or some other person as the court may direct, shall give notice to those entities listed on the schedule of the time for filing a request for payment of an administrative expense and, unless a notice of insufficient assets to pay a dividend is mailed in accordance with Rule 2002(e), the time for filing a claim of a kind specified in § 348(d).

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1996; Dec. 1, 1997; Dec. 1, 1999; October 25, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009; amended, effective December 1, 2010.)

## COMMENT

Subdivision (2) is amended to include a new filing period for motions under § 707(b) and (c) of the Code when a case is converted to chapter 7. The establishment of a deadline for filing such motions is not intended to express a position as to whether such motions are permitted under the Code. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods



- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Subdivision (2).** Subdivision (2) is redesignated as subdivision (2)(A), and a new subdivision (2)(B) is added to the rule. Subdivision (2)(B) provides that a new time period to object to a claim of exemption arises when a case is converted to chapter 7 from chapter 11, 12, or 13. The new time period does not arise, however, if the conversion occurs more than one year after the first order confirming a plan, even if the plan was subsequently modified. A new objection period also does not arise if the case was previously pending under chapter 7 and the objection period had expired in the prior chapter 7 case. [12/1/10]

### **Rule 1020. Small Business Chapter 11 Reorganization Case.**

(a) *Small Business Debtor Designation.* In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor. Except as provided in subdivision (c), the status of the case as a small business case shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) *Objecting to Designation.* Except as provided in subdivision (c), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

(c) *Appointment of Committee of Unsecured Creditors.* If a committee of unsecured creditors has been appointed under § 1102(a)(1), the case shall proceed as a small business case only if, and from the time when, the court enters an order determining that the committee has not been sufficiently active and representative to provide effective oversight of the debtor and that the debtor satisfies all the other requirements for being a small business. A request for a determination under this subdivision may be filed by the United States trustee or a party in interest only within a reasonable time after the failure of the committee to be sufficiently active and representative. The debtor may file a request for a determination at any time as to whether the committee has been sufficiently active and representative.

(d) *Procedure for Objection or Determination.* Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; any committee appointed under § 1102 or its authorized agent, or, if no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs.

(Added December 1, 1997; amended, October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

### **COMMENT**

Under the Code, as amended in 2005, there are no longer any provisions permitting or requiring a small business debtor to elect to be treated as a small business. Therefore, the election provisions in the rule are eliminated.

The 2005 amendments to the Code include several provisions relating to small business cases under chapter 11. Section 101 includes definitions of "small business debtor" and "small business case." The purpose of the new language in this rule is to provide a procedure for informing the parties, the United States trustee, and the court of whether the debtor is a small business debtor, and to provide procedures for resolving disputes regarding the proper characterization of the debtor. Because it is important to resolve such

disputes early in the case, a time limit for objecting to the debtor's self-designation is imposed. Rule 9006(b)(1), which governs enlargement of time, is applicable to the time limits set forth in this rule.

An important factor in determining whether the debtor is a small business debtor is whether the United States trustee has appointed a committee of unsecured creditors under § 1102, and whether such a committee is sufficiently active and representative. Subdivision (c), relating to the appointment and activity of a committee of unsecured creditors, is designed to be consistent with the Code's definition of "small business debtor." [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 1021. Health Care Business Case.**

(a) *Health Care Business Designation.* Unless the court orders otherwise, if a petition in a case under chapter 7, chapter 9, or chapter 11 states that the debtor is a health care business, the case shall proceed as a case in which the debtor is a health care business.

(b) *Motion.* The United States trustee or a party in interest may file a motion to determine whether the debtor is a health care business. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and any other entity as the court directs. The motion shall be governed by Rule 9014.

(Added, October 17, 2005; amended, Dec. 1, 2008.)

### **COMMENT**

Section 101(27A) of the Code, added by the 2005 amendments, defines a health care business. This rule provides procedures for designating the debtor as a health care business. The debtor in a voluntary case, or petitioning creditors in an involuntary case, make that designation by checking the appropriate box on the petition. The rule also provides procedures for resolving disputes regarding the status of the debtor as a health care business. [12/1/08]

## **PART II — OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS**

### **Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case.**

#### **(a) Appointment.**

At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under § 303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors, the United States trustee, and other parties in interest as the court may designate.

#### **(b) Bond of movant.**



An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under § 303(i) of the Code.

(c) *Order of Appointment.*

The order directing the appointment of an interim trustee shall state the reason the appointment is necessary and shall specify the trustee's duties.

(d) *Turnover and report.*

Following qualification of the trustee selected under § 702 of the Code, the interim trustee, unless otherwise ordered, shall (1) forthwith deliver to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.

**Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee.**

(a) *Twenty-one-day Notices to Parties in Interest.* Except as provided in subdivisions (h), (i), (l), (p), and (q) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of:

(1) the meeting of creditors under § 341 or § 1104(b) of the Code, which notice, unless the court orders otherwise, shall include the debtor's employer identification number, social security number, and any other federal taxpayer identification number;

(2) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice;

(3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent;

(4) in a chapter 7 liquidation, a chapter 11 reorganization case, or a chapter 12 family farmer debt adjustment case, the hearing on the dismissal of the case or the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee;

(5) the time fixed to accept or reject a proposed modification of a plan;

(6) a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000;

(7) the time fixed for filing proofs of claims pursuant to Rule 3003(c); and

(8) the time fixed for filing objections and the hearing to consider confirmation of a chapter 12 plan.

(b) *Twenty-eight-day Notices to Parties in Interest.* Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under § 1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary; and (2) for filing objections and the hearing to consider confirmation of a chapter 9, chapter 11, or chapter 13 plan.

(c) *Content of notice.*

(1) *Proposed Use, Sale, or Lease of Property.* Subject to Rule 6004, the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property. The notice of a proposed sale or lease of personally identifiable information under § 363(b)(1) of the Code shall state whether the sale is consistent with any policy prohibiting the transfer of the information.



(2) *Notice of Hearing on Compensation.* The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(6) of this rule shall identify the applicant and the amounts requested.

(3) *Notice of Hearing on Confirmation When Plan Provides for an Injunction.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the notice required under Rule 2002(b)(2) shall:

(A) include in conspicuous language (bold, italic, or underlined text) a statement that the plan proposes an injunction;

(B) describe briefly the nature of the injunction; and

(C) identify the entities that would be subject to the injunction.

(d) *Notice to Equity Security Holders.* In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders held pursuant to § 341 of the Code; (3) the hearing on the proposed sale of all or substantially all of the debtor's assets; (4) the hearing on the dismissal or conversion of a case to another chapter; (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (7) the time fixed to accept or reject a proposed modification of a plan.

(e) *Notice of No Dividend.* In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(f) *Other Notices.* Except as provided in subdivision (l) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, all creditors, and indenture trustees notice by mail of: (1) the order for relief; (2) the dismissal or the conversion of the case to another chapter, or the suspension of proceedings under § 305; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (5) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (6) the waiver, denial, or revocation of a discharge as provided in Rule 4006; (7) entry of an order confirming a chapter 9, 11, or 12 plan; (8) a summary of the trustee's final report in a chapter 7 case if the net proceeds realized exceed \$1,500; (9) a notice under Rule 5008 regarding the presumption of abuse; (10) a statement under § 704(b)(1) as to whether the debtor's case would be presumed to be an abuse under § 707(b); and (11) the time to request a delay in the entry of the discharge under §§ 1141(d)(5)(C), 1228(f), and 1328(h). Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) *Addressing Notices.*

(1) Notices required to be mailed under Rule 2002 to a creditor, indenture trustee, or equity security holder shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case. For the purposes of this subdivision-

(A) a proof of claim filed by a creditor or indenture trustee that designates a mailing address constitutes a filed request to mail notices to that address, unless a notice of no dividend has been given under Rule 2002(e) and a later notice of possible dividend under Rule 3002(c)(5) has not been given; and

(B) a proof of interest filed by an equity security holder that designates a mailing address constitutes a filed request to mail notices to that address.

(2) Except as provided in § 342(f) of the Code, if a creditor or indenture trustee has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. If an equity security holder has not filed a request designating a mailing address under Rule 2002(g)(1) or Rule 5003(e), the notices shall be mailed to the address shown on the list of equity security holders.

(3) If a list or schedule filed under Rule 1007 includes the name and address of a legal representative of an infant or incompetent person, and a person other than that representative files a request or proof of claim designating a name and mailing address that differs from the name and address of the representative included in the list or schedule, unless the court orders otherwise, notices under Rule 2002 shall be mailed to the representative included in the list or schedules and to the name and address designated in the request or proof of claim.

(4) Notwithstanding Rule 2002(g)(1) - (3), an entity and a notice provider may agree that when the notice provider is directed by the court to give a notice, the notice provider shall give the notice to the entity in the manner agreed to and at the address or addresses the entity supplies to the notice provider. That address is conclusively presumed to be a proper address for the notice. The notice provider's failure to use the supplied address does not invalidate any notice that is otherwise effective under applicable law.

(5) A creditor may treat a notice as not having been brought to the creditor's attention under § 342(g)(1) only if, prior to issuance of the notice, the creditor has filed a statement that designates the name and address of the person or organizational subdivision of the creditor responsible for receiving notices under the Code, and that describes the procedures established by the creditor to cause such notices to be delivered to the designated person or subdivision.

(h) *Notices to Creditors Whose Claims are Filed.* In a chapter 7 case, after 90 days following the first date set for the meeting of creditors under § 341 of the Code, the court may direct that all notices required by subdivision (a) of this rule be mailed only to the debtor, the trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and creditors, if any, that are still permitted to file claims by reason of an extension granted pursuant to Rule 3002(c)(1) or (c)(2). In a case where notice of insufficient assets to pay a dividend has been given to creditors pursuant to subdivision (e) of this rule, after 90 days following the mailing of a notice of the time for filing claims pursuant to Rule 3002(c)(5), the court may direct that notices be mailed only to the entities specified in the preceding sentence.

(i) *Notices to Committees.* Copies of all notices required to be mailed pursuant to this rule shall be mailed to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a)(2), (3) and (6) of this rule be transmitted to the United States trustee and be mailed only to the committees elected under § 705 or appointed under § 1102 of the Code or to their authorized agents and to the creditors and equity security holders who serve on the trustee or debtor in possession and file a request that all notices be mailed to them. A committee appointed under § 1114 shall receive copies of all notices required by subdivisions (a)(1), (a)(5), (b), (f)(2), and (f)(7), and such other notices as the court may direct.

(j) *Notices to the United States.* Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case, to the Securities and Exchange Commission at any place the Commission designates, if the Commission has filed either a notice of appearance in the case or a written request to receive notices; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case, to the Internal Revenue Service at its address set out in the register maintained under Rule 5003(e) for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or (5) if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

(k) *Notices to United States Trustee.* Unless the case is a chapter 9 municipality case or unless the United States trustee requests otherwise, the clerk, or some other person as the court may direct, shall transmit to the United States trustee notice of the matters described in subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (b), (f)(1), (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and notice of hearings on all applications for compensation or reimbursement of expenses. Notices to the United States trustee shall be transmitted within the time



prescribed in subdivision (a) or (b) of this rule. The United States trustee shall also receive notice of any other matter if such notice is requested by the United States trustee or ordered by the court. Nothing in these rules requires the clerk or any other person to transmit to the United States trustee any notice, schedule, report, application or other document in a case under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq.

(l) *Notice by Publication.* The court may order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement the notice.

(m) *Orders Designating Matter of Notices.* The court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(n) *Caption.* The caption of every notice given under this rule shall comply with Rule 1005. The caption of every notice required to be given by the debtor to a creditor shall include the information required to be in the notice by § 342(c) of the Code.

(o) *Notice of Order for Relief in Consumer Case.* In a voluntary case commenced by an individual debtor whose debts are primarily consumer debts, the clerk or some other person as the court may direct shall give the trustee and all creditors notice by mail of the order for relief within 21 days from the date thereof.

(p) *Notice to a Creditor with a Foreign Address.*

(1) If, at the request of the United States trustee or a party in interest, or on its own initiative, the court finds that a notice mailed within the time prescribed by these rules would not be sufficient to give a creditor with a foreign address to which notices under these rules are mailed reasonable notice under the circumstances, the court may order that the notice be supplemented with notice by other means or that the time prescribed for the notice by mail be enlarged.

(2) Unless the court for cause orders otherwise, a creditor with a foreign address to which notices under this rule are mailed shall be given at least 30 days' notice of the time fixed for filing a proof of claim under Rule 3002(c) or Rule 3003(c).

(3) Unless the court for cause orders otherwise, the mailing address of a creditor with a foreign address shall be determined under Rule 2002(g).

(q) *Notice of Petition for Recognition of Foreign Proceeding and of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.*

(1) *Notice of Petition for Recognition.* The clerk, or some other person as the court may direct, shall forthwith give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, at least 21 days' notice by mail of the hearing on the petition for recognition of a foreign proceeding. The notice shall state whether the petition seeks recognition as a foreign main proceeding or foreign nonmain proceeding.

(2) *Notice of Court's Intention to Communicate with Foreign Courts and Foreign Representatives.* The clerk, or some other person as the court may direct, shall give the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519 of the Code, all parties to litigation pending in the United States in which the debtor is a party at the time of the filing of the petition, and such other entities as the court may direct, notice by mail of the court's intention to communicate with a foreign court or foreign representative.

(Amended Aug. 30, 1983, P. L. 98-91, § 2(a), 97 Stat. 607; July 10, 1984, P. L. 98-353, Title III, Subtitle A, § 321, 98 Stat 357; Aug. 1, 1987; Aug. 1, 1993; Dec. 1, 1996; Dec. 1, 1997; Dec. 1, 1999; Dec. 1, 2000; Dec. 1, 2001; Dec. 1, 2003; Dec. 1, 2004; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

Subdivision (b) is amended to provide for 25 days' notice of the time for the court to make a final determination whether the plan in a small business case can serve as a



disclosure statement. Conditional approval of a disclosure statement in a small business case is governed by Rule 3017.1 and does not require 25 days' notice. The court may consider this matter in a hearing combined with the confirmation hearing in a small business case.

Because of the requirements of Rule 6004(g), subdivision (c)(1) is amended to require that a trustee leasing or selling personally identifiable information under § 363(b)(1)(A) or (B) of the Code, as amended in 2005, include in the notice of the lease or sale transaction a statement as to whether the lease or sale is consistent with a policy prohibiting the transfer of the information.

Subdivisions (f)(9) and (10) are new. They reflect the 2005 amendments to §§ 342(d) and 704(b) of the Code. Section 342(d) requires the clerk to give notice to creditors shortly after the commencement of the case as to whether a presumption of abuse exists. Subdivision (f)(9) adds this notice to the list of notices that the clerk must give. Subdivision (f)(10) implements the amendment to § 704(b) which requires the court to provide a copy to all creditors of a statement by the United States trustee or bankruptcy administrator as to whether the debtor's case would be presumed to be an abuse under § 707(b) not later than five days after receiving it.

Subdivision (f)(11) is also added to provide notice to creditors of the debtor's filing of a statement in a chapter 11, 12, or 13 case that there is no reasonable cause to believe that § 522(q) applies in the case. This allows a creditor who disputes that assertion to request a delay of the entry of the discharge in the case.

Subdivision (g)(2) of the rule is amended because the 2005 amendments to § 342(f) of the Code permit creditors in chapter 7 and 13 individual debtor cases to file a notice with any bankruptcy court of the address to which the creditor wishes all notices to be sent. Rule 2002(g)(2) continues to operate in chapter 11 and 12 cases, and in chapter 7 cases when the debtor is not an individual. It also continues to apply in cases under chapters 7 and 13 if the creditor has not filed a notice under § 342(f). The amendment to Rule 2002(g)(2) therefore only limits application of the subdivision when a creditor files a notice under § 342(f).

New subdivision (g)(5) implements § 342(g)(1) which was added to the Code in 2005. Section 342(g)(1) allows a creditor to treat a notice as not having been brought to the creditor's attention, and so potentially ineffective, until it is received by a person or organizational subdivision that the creditor has designated to receive notices under the Bankruptcy Code. Under that section, the creditor must have established reasonable procedures for such notices to be delivered to the designated person or subdivision. The rule provides that, in order to challenge a notice under § 342(g)(1), a creditor must have filed the name and address of the designated notice recipient, as well as a description of the procedures for directing notices to that recipient, prior to the time that the challenged notice was issued. The filing required by the rule may be made as part of a creditor's filing under § 342(f), which allows a creditor to file a notice of the address to be used by all bankruptcy courts or by particular bankruptcy courts to provide notice to the creditor in cases under chapters 7 and 13. Filing the name and address of the designated notice recipient and the procedures for directing notices to that recipient will reduce uncertainty as to the proper party for receiving notice and limit factual disputes as to whether a notice recipient has been designated and as to the nature of procedures adopted to direct notices to the recipient.

Subdivision (k) is amended to add notices given under subdivision (q) to the list of notices to be transmitted to the United States trustee.

Section 1514(d) of the Code, added by the 2005 amendments, requires that such additional time as is reasonable under the circumstances be given to creditors with foreign addresses with respect to notices and the filing of a proof of claim. Thus, subdivision (p)(1) is added to this rule to give the court flexibility to direct that notice by other means shall supplement notice by mail, or to enlarge the notice period, for creditors with foreign addresses. If cause exists, such as likely delays in the delivery of mailed notices in particular locations, the court may order that notice also be given by email, facsimile, or private courier. Alternatively, the court may enlarge the notice period for a creditor with a foreign address. It is expected that in most situations involving foreign creditors, fairness

will not require any additional notice or extension of the notice period. This rule recognizes that the court has discretion to establish procedures to determine, on its own initiative, whether relief under subdivision (p) is appropriate, but that the court is not required to establish such procedures and may decide to act only on request of a party in interest.

Subdivision (p)(2) is added to the rule to grant creditors with a foreign address to which notices are mailed at least 30 days' notice of the time within which to file proofs of claims if notice is mailed to the foreign address, unless the court orders otherwise. If cause exists, such as likely delays in the delivery of notices in particular locations, the court may extend the notice period for creditors with foreign addresses. The court may also shorten the additional notice time if circumstances so warrant. For example, if the court in a chapter 11 case determines that supplementing the notice to a foreign creditor with notice by electronic means, such as email or facsimile, would give the creditor reasonable notice, the court may order that the creditor be given only 20 days' notice in accordance with Rule 2002(a)(7).

Subdivision (p)(3) is added to provide that the court may, for cause, override a creditor's designation of a foreign address under Rule 2002(g). For example, if a party in interest believes that a creditor has wrongfully designated a foreign address to obtain additional time when it has a significant presence in the United States, the party can ask the court to order that notices to that creditor be sent to an address other than the one designated by the foreign creditor.

Subdivision (q) is added to require that notice of the hearing on the petition for recognition of a foreign proceeding be given to the debtor, all administrators in foreign proceedings of the debtor, entities against whom provisional relief is sought, and entities with whom the debtor is engaged in litigation at the time of the commencement of the case. There is no need at this stage of the proceedings to provide notice to all creditors. If the foreign representative should take action to commence a case under another chapter of the Code, the rules governing those proceedings will operate to provide that notice is given to all creditors.

The rule also requires notice of the court's intention to communicate with a foreign court or foreign representative. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 2003. Meeting of Creditors or Equity Security Holders.**

(a) *Date and Place.* Except as otherwise provided in § 341(e) of the Code, in a chapter 7 liquidation or a chapter 11 reorganization case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 40 days after the order for relief. In a chapter 12 family farmer debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 35 days after the order for relief. In a chapter 13 individual's debt adjustment case, the United States trustee shall call a meeting of creditors to be held no fewer than 21 and no more than 50 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later date for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest. If the United States trustee designates a place for the meeting which is not regularly staffed by the United States trustee or an assistant who may preside at the meeting, the meeting may be held not more than 60 days after the order for relief.



(b) *Order of meeting.*

(1) *Meeting of creditors.* The United States trustee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a creditors' committee and, if the case is not under subchapter V of chapter 7, the election of a trustee. The presiding officer shall have the authority to administer oaths.

(2) *Meeting of equity security holders.* If the United States trustee convenes a meeting of equity security holders pursuant to § 341(b) of the Code, the United States trustee shall fix a date for the meeting and shall preside.

(3) *Right to vote.* In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, the creditor has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to § 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. A creditor of a partnership may file a proof of claim or writing evidencing a right to vote for the trustee for the estate of a general partner notwithstanding that a trustee for the estate of the partnership has previously qualified. In the event of an objection to the amount or allowability of a claim for the purpose of voting, unless the court orders otherwise, the United States trustee shall tabulate the votes for each alternative presented by the dispute and, if resolution of such dispute is necessary to determine the result of the election, the tabulations for each alternative shall be reported to the court.

(c) *Record of meeting.* Any examination under oath at the meeting of creditors held pursuant to § 341(a) of the Code shall be recorded verbatim by the United States trustee using electronic sound recording equipment or other means of recording, and such record shall be preserved by the United States trustee and available for public access until two years after the conclusion of the meeting of creditors. Upon request of any entity, the United States trustee shall certify and provide a copy or transcript of such recording at the entity's expense.

(d) *Report of election and resolution of disputes in a chapter 7 case.*

(1) *Report of undisputed election.* In a chapter 7 case, if the election of a trustee or a member of a creditors' committee is not disputed, the United States trustee shall promptly file a report of the election, including the name and address of the person or entity elected and a statement that the election is undisputed.

(2) *Disputed Election.* If the election is disputed, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. No later than the date on which the report is filed, the United States trustee shall mail a copy of the report to any party in interest that has made a request to receive a copy of the report. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. Unless a motion for the resolution of the dispute is filed no later than 14 days after the United States trustee files a report of a disputed election for trustee, the interim trustee shall serve as trustee in the case.

(e) *Adjournment.* The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time. The presiding official shall promptly file a statement specifying the date and time to which the meeting is adjourned.

(f) *Special meetings.* The United States trustee may call a special meeting of creditors on request of a party in interest or on the United States trustee's own initiative.

(g) *Final meeting.* If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed \$1,500, the clerk shall mail a summary of the trustee's final account to the creditors with a notice of the meeting, together with a statement of the amount of the claims allowed. The trustee shall attend the final meeting and shall, if requested, report on the administration of the estate.

(Amended Aug. 1, 1987; Aug. 1, 1991; Aug. 1, 1993; Dec. 1, 1999; Dec. 1, 2003; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009; amended by order adopted April 26, 2011, effective December 1, 2011.)



## COMMENT

**Subdivision (e).** — Subdivision (e) is amended to require the presiding official to file a statement after the adjournment of a meeting of creditors or equity security holders designating the period of the adjournment. The presiding official is the United States trustee or the United States trustee's designee. This requirement will provide notice to parties in interest not present at the initial meeting of the date and time to which the meeting has been continued. An adjourned meeting is "held open" as permitted by § 1308(b)(1) of the Code. The filing of this statement will also discourage premature motions to dismiss or convert the case under § 1307(e).

If the debtor has solicited acceptances to a plan before commencement of the case, § 341(e), which was added to the Code by the 2005 amendments, authorizes the court, on request of a party in interest and after notice and a hearing, to order that a meeting of creditors not be convened. The rule is amended to recognize that a meeting of creditors might not be held in those cases. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 2004. Examination.**

(a) *Examination on motion.*

On motion of any party in interest, the court may order the examination of any entity.

(b) *Scope of examination.*

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) *Compelling attendance and production of documents.*

The attendance of an entity for examination and for the production of documents, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court for the district in which the examination is to be held if the attorney is admitted to practice in that court or in the court in which the case is pending.

(d) *Time and place of examination of debtor.*

The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) *Mileage.*

An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the

first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

### **Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination.**

#### *(a) Order to compel attendance for examination.*

On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left the debtor's residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

#### *(b) Removal.*

Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If the debtor is taken into custody under the order at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If the debtor is taken into custody under the order at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest available United States magistrate judge, bankruptcy judge, or district judge. If, after hearing, the magistrate judge, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate judge, bankruptcy judge, or district judge shall order removal, and the person in custody shall be released on conditions ensuring prompt appearance before the court that issued the order to compel the attendance.

#### *(c) Conditions of release.*

In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., § 3146(a) and (b).

### **Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases.**

(a) *Applicability.* This rule applies only in a liquidation case pending under chapter 7 of the Code.

#### *(b) Definitions.*

(1) *Proxy.* A proxy is a written power of attorney authorizing any entity to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate.

(2) *Solicitation of proxy.* The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

#### *(c) Authorized solicitation.*

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or



unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over \$500 or the 100 creditors having the largest claims had at least seven days' notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(d) *Solicitation not authorized.* This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any entity not qualified to vote under § 702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(e) *Data required from holders of multiple proxies.* At any time before the voting commences at any meeting of creditors pursuant to § 341(a) of the Code, or at any other time as the court may direct, a holder of two or more proxies shall file and transmit to the United States trustee a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if the forwarder is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other entity for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any entity, other than a member or regular associate of the proxyholder's law firm, which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by an entity other than the proxyholder, or forwarded to the holder by an entity who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other entity for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any entity, other than a member or regular associate of the solicitor's or forwarder's law firm which may be allowed the trustee or any entity for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to each member in connection with the case other than by way of dividend on the member's claim.



(f) *Enforcement of restrictions on solicitation.* On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

#### **Rule 2007. Review of Appointment of Creditors' Committee Organized Before Commencement of the Case.**

(a) *Motion to review appointment.* If a committee appointed by the United States trustee pursuant to § 1102(a) of the Code consists of the members of a committee organized by creditors before the commencement of a chapter 9 or chapter 11 case, on motion of a party in interest and after a hearing on notice to the United States trustee and other entities as the court may direct, the court may determine whether the appointment of the committee satisfies the requirements of § 1102(b)(1) of the Code.

(b) *Selection of members of committee.* The court may find that a committee organized by unsecured creditors before the commencement of a chapter 9 or chapter 11 case was fairly chosen if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over \$1,000 or the 100 unsecured creditors having the largest claims had at least seven days' notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the lists and statements required by subdivision (e) thereof have been transmitted to the United States trustee; and

(3) the organization of the committee was in all other respects fair and proper.

(c) *Failure to comply with requirements for appointment.* After a hearing on notice pursuant to subdivision (a) of this rule, the court shall direct the United States trustee to vacate the appointment of the committee and may order other appropriate action if the court finds that such appointment failed to satisfy the requirements of § 1102(b)(1) of the Code.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the

rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods .
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 2007.1. Appointment of Trustee or Examiner in a Chapter 11 Reorganization Case.**

(a) *Order to appoint trustee or examiner.* In a chapter 11 reorganization case, a motion for an order to appoint a trustee or an examiner under § 1104(a) or § 1104(c) of the Code shall be made in accordance with Rule 9014.

(b) *Election of trustee.*

(1) *Request for an election.* A request to convene a meeting of creditors for the purpose of electing a trustee in a chapter 11 reorganization case shall be filed and transmitted to the United States trustee in accordance with Rule 5005 within the time prescribed by § 1104(b) of the Code. Pending court approval of the person elected, any person appointed by the United States trustee under § 1104(d) and approved in accordance with subdivision (c) of this rule shall serve as trustee.

(2) *Manner of election and notice.* An election of a trustee under § 1104(b) of the Code shall be conducted in the manner provided in Rules 2003(b)(3) and 2006. Notice of the meeting of creditors convened under § 1104(b) shall be given as provided in Rule 2002. The United States trustee shall preside at the meeting. A proxy for the purpose of voting in the election may be solicited only by a committee of creditors appointed under § 1102 of the Code or by any other party entitled to solicit a proxy pursuant to Rule 2006.

(3) *Report of Election and Resolution of Disputes.*

(A) *Report of Undisputed Election.* If no dispute arises out of the election, the United States trustee shall promptly file a report certifying the election, including the name and address of the person elected and a statement that the election is undisputed. The report shall be accompanied by a verified statement of the person elected setting forth that person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(B) *Dispute Arising Out of an Election.* If a dispute arises out of an election, the United States trustee shall promptly file a report stating that the election is disputed, informing the court of the nature of the dispute, and listing the name and address of any candidate elected under any alternative presented by the dispute. The report shall be accompanied by a verified statement by each candidate elected under each alternative presented by the dispute, setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. Not later than the date on which the report of the disputed election is filed, the United States trustee shall mail a copy of the report and each verified statement to any party in interest that has made a request to convene a meeting under § 1104(b) or to receive a copy of the report, and to any committee appointed under § 1102 of the Code.

(c) *Approval of Appointment.* An order approving the appointment of a trustee or an examiner under § 1104(d) of the Code shall be made on application of the United States trustee. The application shall state the name of the person appointed and, to the best of the applicant's knowledge, all the person's connections with the debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, or persons employed in the office of the United States trustee. The application shall state the names of the parties in interest with whom the United States trustee consulted regarding the appointment. The application shall be accompanied by a verified statement of the



person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(Added Aug. 1, 1991; amended, Dec. 1, 1997; October 17, 2005; Dec. 1, 2008.)

#### COMMENT

Under § 1104(b)(2) of the Code, as amended in 2005, if an eligible, disinterested person is elected to serve as trustee in a chapter 11 case, the United States trustee is directed to file a report certifying the election. The person elected does not have to be appointed to the position. Rather, the filing of the report certifying the election itself constitutes the appointment. The section further provides that in the event of a dispute in the election of a trustee, the court must resolve the matter. The rule is amended to be consistent with § 1104(b)(2).

When the United States trustee files a report certifying the election of a trustee, the person elected must provide a verified statement, similar to the statement required of professional persons under Rule 2014, disclosing connections with parties in interest and certain other persons connected with the case. Although court approval of the person elected is not required, the disclosure of the person's connections will enable parties in interest to determine whether the person is disinterested. [12/1/08]

#### **Rule 2007.2. Appointment of Patient Care Ombudsman in a Health Care Business Case.**

(a) *Order to Appoint Patient Care Ombudsman.* In a chapter 7, chapter 9, or chapter 11 case in which the debtor is a health care business, the court shall order the appointment of a patient care ombudsman under § 333 of the Code, unless the court, on motion of the United States trustee or a party in interest filed no later than 21 days after the commencement of the case or within another time fixed by the court, finds that the appointment of a patient care ombudsman is not necessary under the specific circumstances of the case for the protection of patients.

(b) *Motion for Order to Appoint Ombudsman.* If the court has found that the appointment of an ombudsman is not necessary, or has terminated the appointment, the court, on motion of the United States trustee or a party in interest, may order the appointment at a later time if it finds that the appointment has become necessary to protect patients.

(c) *Notice of Appointment.* If a patient care ombudsman is appointed under § 333, the United States trustee shall promptly file a notice of the appointment, including the name and address of the person appointed. Unless the person appointed is a State Long-Term Care Ombudsman, the notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, patients, any other party in interest, their respective attorneys and accountants, the United States trustee, and any person employed in the office of the United States trustee.

(d) *Termination of Appointment.* On motion of the United States trustee or a party in interest, the court may terminate the appointment of a patient care ombudsman if the court finds that the appointment is not necessary to protect patients.

(e) *Motion.* A motion under this rule shall be governed by Rule 9014. The motion shall be transmitted to the United States trustee and served on: the debtor; the trustee; any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct.

(Added, October 17, 2005; amended, Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)



### COMMENT

Section 333 of the Code, added by the 2005 amendments, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by professional persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the appointment. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 2008. Notice to Trustee of Selection.**

The United States trustee shall immediately notify the person selected as trustee how to qualify and, if applicable, the amount of the trustee's bond. A trustee that has filed a blanket bond pursuant to Rule 2010 and has been selected as trustee in a chapter 7, chapter 12, or chapter 13 case that does not notify the court and the United States trustee in writing of rejection of the office within seven days after receipt of notice of selection shall be deemed to have accepted the office. Any other person selected as trustee shall notify the court and the United States trustee in writing of acceptance of the office within seven days after receipt of notice of selection or shall be deemed to have rejected the office.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods

- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 2009. Trustees for Estates When Joint Administration Ordered.**

#### *(a) Election of single trustee for estates being jointly administered.*

If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 of the Code.

#### *(b) Right of creditors to elect separate trustee.*

Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7.

#### *(c) Appointment of trustees for estates being jointly administered.*

##### *(1) Chapter 7 liquidation cases.*

Except in a case governed by subchapter V of chapter 7, the United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

##### *(2) Chapter 11 reorganization cases.*

If the appointment of a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

##### *(3) Chapter 12 family farmer's debt adjustment cases.*

The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 12 cases.

##### *(4) Chapter 13 individual's debt adjustment cases.*

The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

#### *(d) Potential conflicts of interest.*

On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee who has been elected or appointed, the court shall order the selection of separate trustees for estates being jointly administered.

#### *(e) Separate accounts.*

The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

### **Rule 2010. Qualification by Trustee; Proceeding on Bond.**

#### *(a) Blanket bond.*

The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

#### *(b) Proceeding on bond.*

A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the entity injured by the breach of the condition.

### **Rule 2011. Evidence of Debtor in Possession or Qualification of Trustee.**

(a) Whenever evidence is required that a debtor is a debtor in possession or that a trustee has qualified, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

(b) If a person elected or appointed as trustee does not qualify within the time prescribed by § 322(a) of the Code, the clerk shall so notify the court and the United States trustee.



**Rule 1012. Substitution of Trustee or Successor Trustee; Accounting.****(a) Trustee.**

If a trustee is appointed in a chapter 11 case or the debtor is removed as debtor in possession in a chapter 12 case, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter.

**(b) Successor trustee.**

When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code (1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and (2) the successor trustee shall prepare, file, and transmit to the United States trustee an accounting of the prior administration of the estate.

**Rule 1013. Public Record of Compensation Awarded to Trustees, Examiners, and Professionals.****(a) Record to be kept.**

The clerk shall maintain a public record listing fees awarded by the court (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professionals employed by trustees, and (2) to examiners. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee awarded. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge. "Trustees," as used in this rule, does not include debtors in possession.

**(b) Summary of record.**

At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees awarded during the preceding year. The summary shall be open to examination by the public without charge. The clerk shall transmit a copy of the summary to the United States trustee.

**Rule 1014. Employment of Professional Persons.****(a) Application for an order of employment.**

An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and, unless the case is a chapter 9 municipality case, a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

**(b) Services rendered by member or associate of firm of attorneys or accountants.**

If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

**Rule 1015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status.****(a) Trustee or Debtor in Possession.** A trustee or debtor in possession shall:



(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.

(b) *Chapter 12 Trustee and Debtor in Possession.* In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this paragraph.

(c) *Chapter 13 Trustee and Debtor.*

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court.

(2) *Nonbusiness Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(d) *Foreign Representative.* In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.

(e) *Transmission of Reports.* In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee.

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1996; Dec. 1, 2002; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009; amended by order adopted April 23, 2012, effective December 1, 2012.)

## COMMENT

Subparagraph (a)(6) implements § 308 of the Code, added by the 2005 amendments. That section requires small business chapter 11 debtors to file periodic financial and operating reports, and the rule sets the time for filing those reports and requires the use of an Official Form for the report. The obligation to file reports under this rule does not relieve the trustee or debtor of any other obligations to provide information or documents to the United States trustee.

The rule also is amended to fix the time for the filing of notices under § 1518, added to the Code in 2005. Former subdivision (d) is renumbered as subdivision (e).

Other changes are stylistic. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

Subdivision (a)(3) is amended to correct the reference to § 704. The 2005 amendments to the Code expanded § 704 and created subsections within it. The provision that was previously § 704(8) became § 704(a)(8). The other change to (a)(3) is stylistic. [12/1/12]

**Rule 2015.1. Patient Care Ombudsman.**

(a) *Reports.* A patient care ombudsman, at least 14 days before making a report under § 333(b)(2) of the Code, shall give notice that the report will be made to the court, unless the court orders otherwise. The notice shall be transmitted to the United States trustee, posted conspicuously at the health care facility that is the subject of the report, and served on: the debtor; the trustee; all patients; and any committee elected under § 705 or appointed under § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and such other entities as the court may direct. The notice shall state the date and time when the report will be made, the manner in which the report will be made, and, if the report is in writing, the name, address, telephone number, email address, and website, if any, of the person from whom a copy of the report may be obtained at the debtor's expense.

(b) *Authorization to Review Confidential Patient Records.* A motion by a patient care ombudsman under § 333(c) to review confidential patient records shall be governed by Rule 9014, served on the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, and transmitted to the United States trustee subject to applicable nonbankruptcy law relating to patient privacy. Unless the court orders otherwise, a hearing on the motion may not be commenced earlier than 14 days after service of the motion.

(Added, October 17, 2005; amended, Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

## COMMENT

This rule is new and implements § 333 of the Code, added by the 2005 amendments. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or



to periodic reports to be given during the case. For example, the ombudsman may give notice that reports will be made at specified intervals or dates during the case.

Subdivision (a) of the rule also requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patients. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued confidentiality. Notices given under this rule are subject to the provisions of applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA). [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 2015.2. Transfer of Patient in Health Care Business Case.**

Unless the court orders otherwise, if the debtor is a health care business, the trustee may not transfer a patient to another health care business under § 704(a)(12) of the Code unless the trustee gives at least 14 days' notice of the transfer to the patient care ombudsman, if any, the patient, and any family member or other contact person whose name and address has been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care. The notice is subject to applicable nonbankruptcy law relating to patient privacy.

(Added, October 17, 2005; amended, Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

### **COMMENT**

This rule is new. Section 704(a)(12), added to the Code by the 2005 amendments, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

This rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. For example, a facility could be closed immediately, or very quickly, such that 10 days' notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Notices given under this rule are subject to the provisions of applicable federal and state laws that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA). [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the



rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 2015.3. Reports of Financial Information on Entities in Which a Chapter 11 Estate Holds a Controlling or Substantial Interest.**

(a) *Reporting Requirement.* In a chapter 11 case, the trustee or debtor in possession shall file periodic financial reports of the value, operations, and profitability of each entity that is not a publicly traded corporation or a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by the appropriate Official Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.

(b) *Time for Filing; Service.* The first report required by this rule shall be filed no later than seven days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent reports shall be filed no less frequently than every six months thereafter, until the effective date of a plan or the case is dismissed or converted. Copies of the report shall be served on the United States trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.

(c) *Presumption of Substantial or Controlling Interest; Judicial Determination.* For purposes of this rule, an entity of which the estate controls or owns at least a 20 percent interest, shall be presumed to be an entity in which the estate has a substantial or controlling interest. An entity in which the estate controls or owns less than a 20 percent interest shall be presumed not to be an entity in which the estate has a substantial or controlling interest. Upon motion, the entity, any holder of an interest therein, the United States trustee, or any other party in interest may seek to rebut either presumption, and the court shall, after notice and a hearing, determine whether the estate's interest in the entity is substantial or controlling.

(d) *Modification of Reporting Requirement.* The court may, after notice and a hearing, vary the reporting requirement established by subdivision (a) of this rule for cause, including that the trustee or debtor in possession is not able, after a good faith effort, to comply with those reporting requirements, or that the information required by subdivision (a) is publicly available.

(e) *Notice and Protective Orders.* No later than 14 days before filing the first report required by this rule, the trustee or debtor in possession shall send notice to the entity in which the estate has a substantial or controlling interest, and to all holders - known to the trustee or debtor in possession - of an interest in that entity, that the trustee or debtor in possession expects to file and serve financial information relating to the entity in accordance with this rule. The entity in which the estate has a substantial or controlling interest, or a person holding an interest in that entity, may request protection of the information under § 107 of the Code.

(f) *Effect of Request.* Unless the court orders otherwise, the pendency of a request under subdivisions (c), (d), or (e) of this rule shall not alter or stay the requirements of subdivision (a).

(Added, Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

This rule implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Reports are to be made on the appropriate Official Form. While § 419 places the obligation to report upon the "debtor," this rule extends the

obligation to include cases in which a trustee has been appointed. The court can order that the reports not be filed in appropriate circumstances, such as when the information that would be included in these reports is already available to interested parties. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 21-day periods
- 20-day periods become 28-day periods
- 25-day periods become 35-day periods [12/1/09]

### **Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses.**

(a) *Application for compensation or reimbursement.* An entity seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other entity for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other entity. Unless the case is a chapter 9 municipality case, the applicant shall transmit to the United States trustee a copy of the application.

(b) *Disclosure of compensation paid or promised to attorney for debtor.* Every attorney for a debtor, whether or not the attorney applies for compensation, shall file and transmit to the United States trustee within 14 days after the order for relief, or at another time as the court may direct, the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States trustee within 14 days after any payment or agreement not previously disclosed.

(c) *Disclosure of compensation paid or promised to bankruptcy petition preparer.* Before a petition is filed, every bankruptcy petition preparer for a debtor shall deliver to the debtor, the declaration under penalty of perjury required by § 110(h)(2). The declaration shall disclose any fee, and the source of any fee, received from or on behalf of the debtor within 12 months of the filing of the case and all unpaid fees charged to the debtor. The declaration shall also describe the services performed and documents prepared or caused to be prepared by the bankruptcy petition preparer. The declaration shall be filed with the petition. The petition preparer shall file a supplemental statement within 14 days after any payment or agreement not previously disclosed.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)



## COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Subdivision (c) is amended to reflect the 2005 amendment to § 110(h)(1) of the Bankruptcy Code which now requires that the declaration be filed with the petition. The statute previously required that the petition preparer file the declaration within 10 days after the filing of the petition. The amendment to the rule also corrects the cross reference to § 110(h)(1), which was redesignated as subparagraph (h)(2) of § 110 by the 2005 amendment to the Code.

Other changes are stylistic. [12/1/09]

### **Rule 2017. Examination of Debtor's Transactions with Debtor's Attorney.**

#### *(a) Payment or transfer to attorney before order for relief.*

On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before entry of the order for relief in an involuntary case, to an attorney for services rendered or to be rendered is excessive.

#### *(b) Payment or transfer to attorney after order for relief.*

On motion by the debtor, the United States trustee, or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after entry of an order for relief in a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

### **Rule 2018. Intervention; Right to Be Heard.**

#### *(a) Permissive intervention.*

In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

#### *(b) Intervention by Attorney General of a State.*

In a chapter 7, 11, 12, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

#### *(c) Chapter 9 municipality case.*

The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.

#### *(d) Labor unions.*

In a chapter 9, 11, or 12 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees. A labor union or employees' association which exercises its right to be heard under this subdivision shall not be entitled to appeal any judgment, order, or decree relating to the plan, unless otherwise permitted by law.

#### *(e) Service on entities covered by this rule.*



The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

**Rule 2019. Disclosure Regarding Creditors and Equity Security Holders in Chapter 9 and Chapter 11 Cases.**

(a) *Definitions.* In this rule the following terms have the meanings indicated:

(1) “Disclosable economic interest” means any claim, interest, pledge, lien, option, participation, derivative instrument, or any other right or derivative right granting the holder an economic interest that is affected by the value, acquisition, or disposition of a claim or interest.

(2) “Represent” or “represents” means to take a position before the court or to solicit votes regarding the confirmation of a plan on behalf of another.

(b) *Disclosure by Groups, Committees, and Entities.*

(1) In a chapter 9 or 11 case, a verified statement setting forth the information specified in subdivision (c) of this rule shall be filed by every group or committee that consists of or represents, and every entity that represents, multiple creditors or equity security holders that are (A) acting in concert to advance their common interests, and (B) not composed entirely of affiliates or insiders of one another.

(2) Unless the court orders otherwise, an entity is not required to file the verified statement described in paragraph (1) of this subdivision solely because of its status as:

(A) an indenture trustee;

(B) an agent for one or more other entities under an agreement for the extension of credit;

(C) a class action representative; or

(D) a governmental unit that is not a person.

(c) *Information Required.* The verified statement shall include:

(1) the pertinent facts and circumstances concerning:

(A) with respect to a group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the formation of the group or committee, including the name of each entity at whose instance the group or committee was formed or for whom the group or committee has agreed to act; or

(B) with respect to an entity, the employment of the entity, including the name of each creditor or equity security holder at whose instance the employment was arranged;

(2) if not disclosed under subdivision (c)(1), with respect to an entity, and with respect to each member of a group or committee:

(A) name and address;

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed or the group or committee was formed; and

(C) with respect to each member of a group or committee that claims to represent any entity in addition to the members of the group or committee, other than a committee appointed under § 1102 or § 1114 of the Code, the date of acquisition by quarter and year of each disclosable economic interest, unless acquired more than one year before the petition was filed;

(3) if not disclosed under subdivision (c)(1) or (c)(2), with respect to each creditor or equity security holder represented by an entity, group, or committee, other than a committee appointed under § 1102 or § 1114 of the Code:

(A) name and address; and

(B) the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the statement; and

(4) a copy of the instrument, if any, authorizing the entity, group, or committee to act on behalf of creditors or equity security holders.

(d) *Supplemental Statements.* If any fact disclosed in its most recently filed statement has changed materially, an entity, group, or committee shall file a verified supplemental statement whenever it takes a position before the court or solicits votes on the confirmation

of a plan. The supplemental statement shall set forth the material changes in the facts required by subdivision (c) to be disclosed.

**(e) *Determination of Failure to Comply; Sanctions.***

(1) On motion of any party in interest, or on its own motion, the court may determine whether there has been a failure to comply with any provision of this rule.

(2) If the court finds such a failure to comply, it may:

(A) refuse to permit the entity, group, or committee to be heard or to intervene in the case;

(B) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by the entity, group, or committee; or

(C) grant other appropriate relief.

(Amended by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The rule is substantially amended to expand the scope of its coverage and the content of its disclosure requirements. Stylistic and organizational changes are also made in order to provide greater clarity. Because the rule no longer applies only to representatives of creditors and equity security holders, the title of the rule has been changed to reflect its broadened focus on disclosure of financial information in chapter 9 and chapter 11 cases.

**Subdivision (a).** — The content of subdivision (a) is new. It sets forth two definitions. The first is the definition of the term “disclosable economic interest,” which is used in subdivisions (c)(2) and (c)(3). The definition of the term is intended to be sufficiently broad to cover any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 9 or chapter 11 case. A disclosable economic interest extends beyond claims and interests owned by a stakeholder and includes, among other types of holdings, short positions, credit default swaps, and total return swaps.

The second definition is of “represent” or “represents.” The definition provides that representation requires active participation in the case or in a proceeding on behalf of another entity - either by taking a position on a matter before the court or by soliciting votes on the confirmation of a plan. Thus, for example, an attorney who is retained and consulted by a creditor or equity security holder to monitor the case, but who does not advocate any position before the court or engage in solicitation activities on behalf of that client, does not represent the creditor or equity security holder for purposes of this rule.

**Subdivision (b).** — Subdivision (b)(1) specifies who is covered by the rule’s disclosure requirements. In addition to an entity, group, or committee that *represents* more than one creditor or equity security holder, the amendment extends the rule’s coverage to groups or committees that *consist* of more than one creditor or equity security holder. The rule no longer excludes official committees, except as specifically indicated. The rule applies to a group of creditors or equity security holders that act in concert to advance common interests (except when the group consists exclusively of affiliates or insiders of one another), even if the group does not call itself a committee.

Subdivision (b)(2) excludes certain entities from the rule’s coverage. Even though these entities may represent multiple creditors or equity security holders, they do so under formal legal arrangements of trust or contract law that preclude them from acting on the basis of conflicting economic interests. For example, an indenture trustee’s responsibilities are defined by the indenture, and individual interests of bondholders would not affect the trustee’s representation.

**Subdivision (c).** — Subdivision (c) sets forth the information that must be included in a verified statement required to be filed under this rule. Subdivision (c)(1) continues to require disclosure concerning the formation of committee or group, other than an official committee, and the employment of an entity.

Subdivision (c)(2) specifies information that must be disclosed with respect to the entity and each member of the committee and group filing the statement. In the case of a committee or group, the information about the nature and amount of a disclosable economic interest must be specifically provided on a member-by-member basis, and not in



the aggregate. The quarter and year in which each disclosable economic interest was acquired by each member of a committee or group (other than an official committee) that claims to represent others must also be specifically provided, except for a disclosable economic interest acquired more than a year before the filing of the petition. Although the rule no longer requires the disclosure of the precise date of acquisition or the amount paid for disclosable economic interests, nothing in this rule precludes either the discovery of that information or its disclosure when ordered by the court pursuant to authority outside this rule.

Subdivision (c)(3) specifies information that must be disclosed with respect to creditors or equity security holders that are represented by an entity, group, or committee. This provision does not apply with respect to those represented by official committee. The information required to be disclosed under the subdivision (c)(3) parallels that required to be disclosed under subdivision (c)(2)(A) and (B). The amendment also clarifies that under (c)(3) the nature and amount of each disclosable economic interests of represented creditors and shareholders must be stated as of the date of the verified statement.

Subdivision (c)(4) requires the attachment of any instrument authorizing the filer of the verified statement to act on behalf of creditors or equity security holders.

**Subdivision (d).** — Subdivision (d) requires the filing of a supplemental statement at the time an entity, group, or committee takes a position before the court or solicits votes on a plan if there has been a material change in any of the information contained in its last filed statement. The supplemental verified statement must set forth the material changes that have occurred regarding the information required to be disclosed by subdivision (c) of this rule.

**Subdivision (e).** — Subdivision (e) addresses the court's authority to determine whether there has been a violation of this rule and to impose a sanction for any violation. It no longer addresses the court's authority to determine violations of other applicable laws regulating the activities and personnel of an entity, group, or committee.

### **Rule 2020. Review of Acts by United States Trustee.**

A proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014.

## **PART III — CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS**

### **Rule 3001. Proof of Claim.**

(a) *Form and content.* A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

(b) *Who may execute.* A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) *Supporting Information.*

(1) *Claim Based on a Writing.* Except for a claim governed by paragraph (3) of this subdivision, when a claim, or an interest in property of the debtor securing the claim, is based on a writing, a copy of the writing shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(2) *Additional Requirements in an Individual Debtor Case; Sanctions for Failure to Comply.* In a case in which the debtor is an individual:

(A) If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim.

(B) If a security interest is claimed in the debtor's property, a statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.



(C) If a security interest is claimed in property that is the debtor's principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim. If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim.

(D) If the holder of a claim fails to provide any information required by this subdivision (c), the court may, after notice and hearing, take either or both of the following actions:

(i) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(ii) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

(3) *Claim Based on an Open-End or Revolving Consumer Credit Agreement.*

(A) When a claim is based on an open-end or revolving consumer credit agreement — except one for which a security interest is claimed in the debtor's real property — a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;

(iii) the date of an account holder's last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.

(d) *Evidence of perfection of security interest.* If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) *Transferred claim.*

(1) *Transfer of claim other than for security before proof filed.* If a claim has been transferred other than for security before proof of the claim has been filed, the proof of claim may be filed only by the transferee or an indenture trustee.

(2) *Transfer of claim other than for security after proof filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred other than for security after the proof of claim has been filed, evidence of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If the alleged transferor files a timely objection and the court finds, after notice and a hearing, that the claim has been transferred other than for security, it shall enter an order substituting the transferee for the transferor. If a timely objection is not filed by the alleged transferor, the transferee shall be substituted for the transferor.

(3) *Transfer of claim for security before proof filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(4) *Transfer of claim for security after proof filed.* If a claim other than one based on a publicly traded note, bond, or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the alleged transferor by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed within 21 days of the mailing of the notice or within any additional time allowed by the court. If a timely objection is filed by the alleged transferor, the court, after notice and a hearing, shall determine whether the claim has been transferred for security. If the transferor or transferee does not file an agreement regarding its relative rights respecting voting of the claim, payment of dividends thereon, or participation in the administration of the estate, on motion by a party in interest and after notice and a hearing, the court shall enter such orders respecting these matters as may be appropriate.

(5) *Service of objection or motion; notice of hearing.* A copy of an objection filed pursuant to paragraph (2) or (4) or a motion filed pursuant to paragraph (3) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferor or transferee, whichever is appropriate, at least 30 days prior to the hearing.

(f) *Evidentiary effect.* A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

(g) To the extent not inconsistent with the United States Warehouse Act or applicable State law, a warehouse receipt, scale ticket, or similar document of the type routinely issued as evidence of title by a grain storage facility, as defined in section 557 of title 11, shall constitute prima facie evidence of the validity and amount of a claim of ownership of a quantity of grain.

(Amended by order adopted March 26, 2009, effective December 1, 2009; amended by order adopted April 26, 2011, effective December 1, 2011; amended by order adopted April 23, 2012, effective December 1, 2012.)

#### COMMENT

**Subdivision (c).** — Subdivision (c) is amended to prescribe with greater specificity the supporting information required to accompany certain proofs of claim and, in cases in which the debtor is an individual, the consequences of failing to provide the required information.

Existing subdivision (c) is redesignated as (c)(1).

Subdivision (c)(2) is added to require additional information to accompany proofs of claim filed in cases in which the debtor is an individual. When the holder of a claim seeks to recover — in addition to the principal amount of a debt — interest, fees, expenses, or other charges, the proof of claim must be accompanied by a statement itemizing these additional amounts with sufficient specificity to make clear the basis for the claimed amount.

If a claim is secured by a security interest in the property of the debtor and the debtor defaulted on the claim prior to the filing of the petition, the proof of claim must be accompanied by a statement of the amount required to cure the prepetition default.

If the claim is secured by a security interest in the debtor's principal residence, the proof of claim must be accompanied by the attachment prescribed by the appropriate Official Form. In that attachment, the holder of the claim must provide the information required by subparagraphs (A) and (B) of this paragraph (2). In addition, if an escrow account has been established in connection with the claim, an escrow account statement showing the account balance, and any amount owed, as of the date the petition was filed must be submitted in accordance with subparagraph (C). The statement must be prepared in a form consistent with the requirements of nonbankruptcy law. *See, e.g.,* 12 U.S.C. § 2601 *et seq.* (Real Estate Settlement Procedure Act). Thus the holder of the claim may provide the escrow account statement using the same form it uses outside of bankruptcy for this purpose.

Subparagraph (D) of subdivision (c)(2) sets forth sanctions that the court may impose on a creditor in an individual debtor case that fails to provide information required by subdivision (c). Failure to provide the required information does not itself constitute a



ground for disallowance of a claim. *See* § 502(b) of the Code. But when an objection to the allowance of a claim is made or other litigation arises concerning the status or treatment of a claim, if the holder of that claim has not complied with the requirements of this subdivision, the court may preclude it from presenting as evidence any of the omitted information, unless the failure to comply with this subdivision was substantially justified or harmless. The court retains discretion to allow an amendment to a proof of claim under appropriate circumstances or to impose a sanction different from or in addition to the preclusion of the introduction of evidence.

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

Subdivision (c) is amended in several respects. The former requirement in paragraph (1) to file an original or duplicate of a supporting document is amended to reflect the current practice of filing only copies. The proof of claim form instructs claimants not to file the original of a document because it may be destroyed by the clerk's office after scanning.

Subdivision (c) is further amended to add paragraph (3). Except with respect to claims secured by a security interest in the debtor's real property (such as a home equity line of credit), paragraph (3) specifies information that must be provided in support of a claim based on an openend or revolving consumer credit agreement (such as an agreement underlying the issuance of a credit card). Because a claim of this type may have been sold one or more times prior to the debtor's bankruptcy, the debtor may not recognize the name of the person filing the proof of claim. Disclosure of the information required by paragraph (3) will assist the debtor in associating the claim with a known account. It will also provide a basis for assessing the timeliness of the claim. The date, if any, on which the account was charged to profit and loss ("charge-off" date) under subparagraph (A)(v) should be determined in accordance with applicable standards for the classification and account management of consumer credit. A proof of claim executed and filed in accordance with subparagraph (A), as well as the applicable provisions of subdivisions (a), (b), (c)(2), and (e), constitutes prima facie evidence of the validity and amount of the claim under subdivision (f).

To the extent that paragraph (3) applies to a claim, paragraph (1) of subdivision (c) is not applicable. A party in interest, however, may obtain the writing on which an open-end or revolving consumer credit claim is based by requesting in writing that documentation from the holder of the claim. The holder of the claim must provide the documentation within 30 days after the request is sent. The court, for cause, may extend or reduce that time period under Rule 9006. Changes made after publication.

**Subdivision (c)(1).** The requirement for the attachment of a writing on which a claim is based was changed to require that a copy, rather than the original or a duplicate, of the writing be provided.

**Subdivision (c)(3).** An exception to subparagraph (A) was added for open-end or revolving consumer credit agreements that are secured by the debtor's real property.

A time limit of 30 days for responding to a written request under subparagraph (B) was added. A statement was added to clarify that if a proof of claim complies with subdivision (c)(3)(A), as well as with subdivisions (a), (b), (c)(2), and (e), it constitutes prima facie evidence of the validity and amount of the claim under subdivision (f).

**Other changes.** Stylistic changes were also made to the rule. [12/1/12]

### **Rule 3002. Filing Proof of Claim or Interest.**

(a) *Necessity for Filing.* An unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005.



(b) *Place of Filing.* A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) *Time for Filing.* In a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed no later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:

(1) A proof of claim filed by a governmental unit, other than for a claim resulting from a tax return filed under § 1308, is timely filed if it is filed not later than 180 days after the date of the order for relief. A proof of claim filed by a governmental unit for a claim resulting from a tax return filed under § 1308 is timely filed if it is filed not later than 180 days after the date of the order for relief or 60 days after the date of the filing of the tax return. The court may, for cause, enlarge the time for a governmental unit to file a proof of claim only upon motion of the governmental unit made before expiration of the period for filing a timely proof of claim.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors under Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall give at least 90 days' notice by mail to creditors of that fact and of the date by which proofs of claim must be filed.

(6) If notice of the time to file a proof of claim has been mailed to a creditor at a foreign address, on motion filed by the creditor before or after the expiration of the time, the court may extend the time by not more than 60 days if the court finds that the notice was under the circumstances to give the creditor a reasonable time to file a proof of claim.

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1996; October 17, 2005; Dec. 1, 2008.)

#### COMMENT

Subdivision (c)(1) is amended to reflect the addition of § 1308 to the Bankruptcy Code in 2005. This provision requires that chapter 13 debtors file tax returns during the pendency of the case, and imposes bankruptcy-related consequences if debtors fail to do so. Subdivision (c)(1) provides additional time for governmental units to file a proof of claim for tax obligations with respect to tax returns filed during the pendency of a chapter 13 case. This implements § 1308, added by the 2005 amendments, which requires that chapter 13 debtors file tax returns during the pendency of a chapter 13 case. The amendment also allows the governmental unit to move for additional time to file a proof of claim prior to expiration of the applicable filing period.

Subdivision (c)(5) of the rule is amended to set a new period for providing notice to creditors that they may file a proof of claim in a case in which they were previously informed that there was no need to file a claim. Under Rule 2002(e), if it appears that there will be no distribution to creditors, the creditors are notified of this fact and are informed that if assets are later discovered and a distribution is likely, that a new notice will be given to the creditors. This second notice is prescribed by Rule 3002(c)(5). The rule is amended to direct the clerk to give at least 90 days' notice of the time within which creditors may file a proof of claim. Setting the deadline in this manner allows the notices being sent to creditors to be more accurate regarding the deadline than was possible under the prior rule.

The rule previously began the 90 day notice period from the time of the mailing of the notice, a date that could vary and generally would not even be known to the creditor. Under the amended rule, the notice will identify a specific bar date for filing proofs of claim thereby being more helpful to the creditors.

Subdivision (c)(6) is added to give the court discretion to extend the time for filing a proof of claim for a creditor who received notice of the time to file the claim at a foreign address, if the court finds that the notice was not sufficient; under the particular circumstances, to give the foreign creditor a reasonable time to file a proof of claim. This amendment is designed to comply with § 1514(d), added to the Code by the 2005 amendments, and requires that the rules and orders of the court provide such additional time as is reasonable under the circumstances for foreign creditors to file claims in cases under all chapters of the Code.

Other changes are stylistic. [12/1/08]

### **Rule 3002.1. Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence.**

(a) *In General.* This rule applies in a chapter 13 case to claims that are (1) secured by a security interest in the debtor's principal residence, and (2) provided for under § 1322(b)(5) of the Code in the debtor's plan.

(b) *Notice of Payment Changes.* The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.

(c) *Notice of Fees, Expenses, and Charges.* The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred.

(d) *Form and Content.* A notice filed and served under subdivision (b) or (c) of this rule shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim. The notice is not subject to Rule 3001(f).

(e) *Determination of Fees, Expenses, or Charges.* On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code.

(f) *Notice of Final Cure Payment.* Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

(g) *Response to Notice of Final Cure Payment.* Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

(h) *Determination of Final Cure and Payment.* On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court



shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

(i) *Failure to Notify*. If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

(Added by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

This rule is new. It is added to aid in the implementation of § 1322(b)(5), which permits a chapter 13 debtor to cure a default and maintain payments on a home mortgage over the course of the debtor's plan. It applies regardless of whether the trustee or the debtor is the disbursing agent for postpetition mortgage payments.

In order to be able to fulfill the obligations of § 1322(b)(5), a debtor and the trustee have to be informed of the exact amount needed to cure any prepetition arrearage, see Rule 3001(c)(2), and the amount of the postpetition payment obligations. If the latter amount changes over time, due to the adjustment of the interest rate, escrow account adjustments, or the assessment of fees, expenses, or other charges, notice of any change in payment amount needs to be conveyed to the debtor and trustee. Timely notice of these changes will permit the debtor or trustee to challenge the validity of any such charges, if appropriate, and to adjust postpetition mortgage payments to cover any undisputed claimed adjustment. Compliance with the notice provision of the rule should also eliminate any concern on the part of the holder of the claim that informing a debtor of a change in postpetition payment obligations might violate the automatic stay.

**Subdivision (a)** — Subdivision (a) specifies that this rule applies only in a chapter 13 case to claims secured by a security interest in the debtor's principal residence.

**Subdivision (b)** — Subdivision (b) requires the holder of a claim to notify the debtor, debtor's counsel, and the trustee of any postpetition change in the mortgage payment amount at least 21 days before the new payment amount is due.

**Subdivision (c)** — Subdivision (c) requires an itemized notice to be given, within 180 days of incurrence, of any postpetition fees, expenses, or charges that the holder of the claim asserts are recoverable from the debtor or against the debtor's principal residence. This might include, for example, inspection fees, late charges, or attorney's fees.

**Subdivision (d)** — Subdivision (d) provides the method of giving the notice under subdivisions (b) and (c). In both instances, the holder of the claim must give notice of the change as prescribed by the appropriate Official Form. In addition to serving the debtor, debtor's counsel, and the trustee, the holder of the claim must also file the notice on the claims register in the case as a supplement to its proof of claim. Rule 3001(f) does not apply to any notice given under subdivision (b) or (c), and therefore the notice will not constitute prima facie evidence of the validity and amount of the payment change or of the fee, expense, or charge.

**Subdivision (e)** — Subdivision (e) permits the debtor or trustee, within a year after service of a notice under subdivision (c), to seek a determination by the court as to whether the fees, expenses, or charges set forth in the notice are required by the underlying agreement or applicable nonbankruptcy law to cure a default or maintain payments.

**Subdivision (f)** — Subdivision (f) requires the trustee to issue a notice to the holder of the claim, the debtor, and the debtor's attorney within 30 days after completion of payments under the plan. The notice must (1) indicate that all amounts required to cure a default on a claim secured by the debtor's principal residence have been paid, and (2) direct the holder to comply with subdivision (g). If the trustee fails to file this notice within



the required time, this subdivision also permits the debtor to file and serve the notice on the trustee and the holder of the claim.

**Subdivision (g)** — Subdivision (g) governs the response of the holder of the claim to the trustee's or debtor's notice under subdivision (f). Within 21 days after service of notice of the final cure payment, the holder of the claim must file and serve a statement indicating whether the prepetition default has been fully cured and also whether the debtor is current on all payments in accordance with § 1322(b)(5) of the Code. If the holder of the claim contends that all cure payments have not been made or that the debtor is not current on other payments required by § 1322(b)(5), the response must itemize all amounts, other than regular future installment payments, that the holder contends are due.

**Subdivision (h)** — Subdivision (h) provides a procedure for the judicial resolution of any disputes that may arise about payment of a claim secured by the debtor's principal residence. Within 21 days after the service of the statement under (g), the trustee or debtor may move for a determination by the court of whether any default has been cured and whether any other non-current obligations remain outstanding.

**Subdivision (i)** — Subdivision (i) specifies sanctions that may be imposed if the holder of a claim fails to provide any of the information as required by subdivisions (b), (c), or (g).

If, after the chapter 13 debtor has completed payments under the plan and the case has been closed, the holder of a claim secured by the debtor's principal residence seeks to recover amounts that should have been but were not disclosed under this rule, the debtor may move to have the case reopened in order to seek sanctions against the holder of the claim under subdivision (i).

### **Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases.**

(a) *Applicability of Rule.* This rule applies in chapter 9 and 11 cases.

(b) *Schedule of Liabilities and List of Equity Security Holders.*

(1) *Schedule of Liabilities.* The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c) (2) of this rule.

(2) *List of Equity Security Holders.* The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

(c) *Filing Proof of Claim.*

(1) *Who May File.* Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) *Who Must File.* Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) *Time for Filing.* The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6).

(4) *Effect of Filing Claim or Interest.* A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(a)(1) of the Code.

(5) *Filing by Indenture Trustee.* An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) *Proof of Right to Record Status.* For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, an entity who is not the record holder of a security may file a statement setting forth facts which entitle that entity to be treated as the record holder. An objection to the statement may be filed by any party in interest.

(Amended Aug. 1, 1987; Aug. 1, 1991; Oct. 17, 2005; Dec. 1, 2008.)

### COMMENT

Subdivision (c)(3) is amended to implement § 1514(d) of the Code, which was added by the 2005 amendments. It makes the new Rule 3002(c)(6) applicable in chapter 9 and chapter 11 cases. This change was necessary so that creditors with foreign addresses can be provided such additional time as is reasonable under the circumstances to file proofs of claims. [12/1/08]

### **Rule 3004. Filing of Claims by Debtor or Trustee.**

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), the debtor or trustee may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c), whichever is applicable. The clerk shall forthwith give notice of the filing to the creditor, the debtor and the trustee.

### **Rule 3005. Filing of Claim, Acceptance, or Rejection By Guarantor, Surety, Indorser, or Other Codebtor.**

#### *(a) Filing of claim.*

If a creditor does not timely file a proof of claim under Rule 3002(c) or 3003(c), any entity that is or may be liable with the debtor to that creditor, or who has secured that creditor, may file a proof of the claim within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c) whichever is applicable. No distribution shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution.

#### *(b) Filing of acceptance or rejection; substitution of creditor.*

An entity which has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in the entity's own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice prior to confirmation of a plan of the creditor's intention to act in the creditor's own behalf, the creditor shall be substituted for the obligor with respect to that claim.

### **Rule 3006. Withdrawal of Claim; Effect on Acceptance or Rejection of Plan.**

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee elected pursuant to § 705(a) or appointed pursuant to § 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

### **Rule 3007. Objections to Claims.**

(a) *Objections to claims.* An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or



otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing.

(b) *Demand for relief requiring an adversary proceeding.* A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

(c) *Limitation on joinder of claims objections.* Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

(d) *Omnibus objection.* Subject to subdivision (e), objections to more than one claim may be joined in an omnibus objection if all the claims were filed by the same entity, or the objections are based solely on the grounds that the claims should be disallowed, in whole or in part, because:

- (1) they duplicate other claims;
- (2) they have been filed in the wrong case;
- (3) they have been amended by subsequently filed proofs of claim;
- (4) they were not timely filed;
- (5) they have been satisfied or released during the case in accordance with the Code, applicable rules, or a court order;
- (6) they were presented in a form that does not comply with applicable rules, and the objection states that the objector is unable to determine the validity of the claim because of the noncompliance;
- (7) they are interests, rather than claims; or
- (8) they assert priority in an amount that exceeds the maximum amount under § 507 of the Code.

(e) *Requirements for omnibus objection.* An omnibus objection shall:

- (1) state in a conspicuous place that claimants receiving the objection should locate their names and claims in the objection;
  - (2) list claimants alphabetically, provide a cross reference to claim numbers, and, if appropriate, list claimants by category of claims;
  - (3) state the grounds of the objection to each claim and provide a cross-reference to the pages in the omnibus objection pertinent to the stated grounds;
  - (4) state in the title the identity of the objector and the grounds for the objections;
  - (5) be numbered consecutively with other omnibus objections filed by the same objector; and
  - (6) contain objections to no more than 100 claims.
- (f) *Finality of objection.* The finality of any order regarding a claim objection included in an omnibus objection shall be determined as though the claim had been subject to an individual objection.

(Amended by order adopted April 30, 2007, effective December 1, 2007.)

### **Rule 3008. Reconsideration of Claims.**

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

### **Rule 3009. Declaration and Payment of Dividends in a Chapter 7 Liquidation Case.**

In a chapter 7 case, dividends to creditors shall be paid as promptly as practicable. Dividend checks shall be made payable to and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another entity to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other entity and shall be mailed to the other entity.



**Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases.**

*(a) Chapter 7 cases.*

In a chapter 7 case no dividend in an amount less than \$5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.

*(b) Chapter 12 and chapter 13 cases.*

In a chapter 12 or chapter 13 case no payment in an amount less than \$15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates \$15. Any funds remaining shall be distributed with the final payment.

**Rule 3011. Unclaimed Funds in Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, and Chapter 13 Individual's Debt Adjustment Cases.**

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

**Rule 3012. Valuation of Security.**

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.

**Rule 3013. Classification of Claims and Interests.**

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122, 1222(b)(1), and 1322(b)(1) of the Code.

**Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case.**

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

**Rule 3015. Filing, Objection to Confirmation, and Modification of a Plan in a Chapter 12 Family Farmer's Debt Adjustment or a Chapter 13 Individual's Debt Adjustment Case.**

*(a) Chapter 12 plan.* The debtor may file a chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within the time prescribed by § 1221 of the Code.

*(b) Chapter 13 plan.* The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 14 days thereafter, and such time may

not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 14 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

(c) *Dating.* Every proposed plan and any modification thereof shall be dated.

(d) *Notice and copies.* The plan or a summary of the plan shall be included with each notice of the hearing on confirmation mailed pursuant to Rule 2002. If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

(e) *Transmission to United States trustee.* The clerk shall forthwith transmit to the United States trustee a copy of the plan and any modification thereof filed pursuant to subdivision (a) or (b) of this rule.

(f) *Objection to confirmation; determination of good faith in the absence of an objection.* An objection to confirmation of a plan shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee, before confirmation of the plan. An objection to confirmation is governed by Rule 9014. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(g) *Modification of plan after confirmation.* A request to modify a plan pursuant to § 1229 or § 1329 of the Code shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed for filing objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee. A copy of the proposed modification, or a summary thereof, shall be included with the notice. If required by the court, the proponent shall furnish a sufficient number of copies of the proposed modification, or a summary thereof, to enable the clerk to include a copy with each notice. Any objection to the proposed modification shall be filed and served on the debtor, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee. An objection to a proposed modification is governed by Rule 9014.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

#### **Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case.**

(a) *Identification of Plan.* Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) *Disclosure Statement.* In a chapter 9 or 11 case, a disclosure statement under § 1125 of the Code or evidence showing compliance with § 1126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate informa-



tion under § 1125(f)(1). If the plan is intended to provide adequate information under § 1125(f)(1), it shall be so designated and Rule 3017.1 shall apply as if the plan is a disclosure statement.

(c) *Injunction Under a Plan.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code, the plan and disclosure statement shall describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined and identify the entities that would be subject to the injunction.

(d) *Standard Form Small Business Disclosure Statement and Plan.* In a small business case, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court.

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1996; Dec. 1, 2001; October 17, 2005; Dec. 1, 2008.)

### COMMENT

Subdivision (b) is amended to recognize that, in 2005, § 1125(f)(1) was added to the Code to provide that the plan proponent in a small business case need not file a disclosure statement if the plan itself includes adequate information and the court finds that a separate disclosure statement is unnecessary. If the plan is intended to provide adequate information in a small business case, it may be conditionally approved as a disclosure statement under Rule 3017.1 and is subject to all other rules applicable to disclosure statements in small business cases.

Subdivision (d) is added to the rule to implement § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 which requires the promulgation of Official Forms for plans and disclosure statements in small business cases. Section 1125(f)(2) of the Code provides that the court may approve a disclosure statement submitted on the appropriate Official Form or on a standard form approved by the court. The rule takes no position on whether a court may require a local standard form disclosure statement or plan of reorganization in lieu of the Official Forms.

Other amendments are stylistic. [12/1/08]

### **Rule 3017. Court Consideration of Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case.**

(a) *Hearing on disclosure statement and objections.* Except as provided in Rule 3017.1, after a disclosure statement is filed in accordance with Rule 3016(b), the court shall hold a hearing on at least 28 days' notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider the disclosure statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, any trustee or committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed and served on the debtor, the trustee, any committee appointed under the Code, and any other entity designated by the court, at any time before the disclosure statement is approved or by an earlier date as the court may fix. In a chapter 11 reorganization case, every notice, plan, disclosure statement, and objection required to be served or mailed pursuant to this subdivision shall be transmitted to the United States trustee within the time provided in this subdivision.

(b) *Determination on disclosure statement.* Following the hearing the court shall determine whether the disclosure statement should be approved.

(c) *Dates fixed for voting on plan and confirmation.* On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) *Transmission and notice to United States trustee, creditors and equity security holders.* Upon approval of a disclosure statement — except to the extent that the court



orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders — the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and

(4) any other information as the court may direct, including any court opinion approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. If the court opinion is not transmitted or only a summary of the plan is transmitted, the court opinion or the plan shall be provided on request of a party in interest at the plan proponent's expense. If the court orders that the disclosure statement and the plan or a summary of the plan shall not be mailed to any unimpaired class, notice that the class is designated in the plan as unimpaired and notice of the name and address of the person from whom the plan or summary of the plan and disclosure statement may be obtained upon request and at the plan proponent's expense, shall be mailed to members of the unimpaired class together with the notice of the time fixed for filing objections to and the hearing on confirmation. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing.

(e) *Transmission to beneficial holders of securities.* At the hearing held pursuant to subdivision (a) of this rule, the court shall consider the procedures for transmitting the documents and information required by subdivision (d) of this rule to beneficial holders of stock, bonds, debentures, notes, and other securities, determine the adequacy of the procedures, and enter any orders the court deems appropriate.

(f) *Notice and Transmission of Documents to Entities Subject to an Injunction Under a Plan.* If a plan provides for an injunction against conduct not otherwise enjoined under the Code and an entity that would be subject to the injunction is not a creditor or equity security holder, at the hearing held under Rule 3017(a), the court shall consider procedures for providing the entity with:

- (1) at least 28 days' notice of the time fixed for filing objections and the hearing on confirmation of the plan containing the information described in Rule 2002(c)(3); and
- (2) to the extent feasible, a copy of the plan and disclosure statement.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 21-day periods
- 20-day periods become 28-day periods
- 25-day periods become 35-day periods [12/1/09]

#### **Rule 3017.1. Court Consideration of Disclosure Statement in a Small Business Case.**

(a) *Conditional Approval of Disclosure Statement.* In a small business case, the court may, on application of the plan proponent or on its own initiative, conditionally approve a

disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

- (1) fix a time within which the holders of claims and interests may accept or reject the plan;
- (2) fix a time for filing objections to the disclosure statement;
- (3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and
- (4) fix a date for the hearing on confirmation.

(b) *Application of Rule 3017.* Rule 3017(a), (b), (c), and (e) do not apply to a conditionally approved disclosure statement. Rule 3017(d) applies to a conditionally approved disclosure statement, except that conditional approval is considered approval of the disclosure statement for the purpose of applying Rule 3017(d).

(c) *Final Approval.*

(1) *Notice.* Notice of the time fixed for filing objections and the hearing to consider final approval of the disclosure statement shall be given in accordance with Rule 2002 and may be combined with notice of the hearing on confirmation of the plan.

(2) *Objections.* Objections to the disclosure statement shall be filed, transmitted to the United States trustee, and served on the debtor, the trustee, any committee appointed under the Code and any other entity designated by the court at any time before final approval of the disclosure statement or by an earlier date as the court may fix.

(3) *Hearing.* If a timely objection to the disclosure statement is filed, the court shall hold a hearing to consider final approval before or combined with the hearing on confirmation of the plan.

(Added December 1, 1997; amended, October 17, 2005; December 1, 2008.)

#### COMMENT

Section 101 of the Code, as amended in 2005, defines a “small business case” and “small business debtor,” and eliminates any need to elect that status. Therefore, the reference in the rule to an election is deleted.

As provided in the amendment to Rule 3016(b), a plan intended to provide adequate information in a small business case under § 1125(f)(1) may be conditionally approved and is otherwise treated as a disclosure statement under this rule. [12/1/08]

#### **Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case.**

(a) *Entities entitled to accept or reject plan; time for acceptance or rejection.*

A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court, for cause, after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

(b) *Acceptances or rejections obtained before petition.*

An equity security holder or creditor whose claim is based on a security of record who accepted or rejected the plan before the commencement of the case shall not be deemed to have accepted or rejected the plan pursuant to § 1126(b) of the Code unless the equity security holder or creditor was the holder of record of the security on the date specified in the solicitation of such acceptance or rejection for the purposes of such solicitation. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the



court finds after notice and hearing that the plan was not transmitted to substantially all creditors and equity security holders of the same class, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.

*(c) Form of acceptance or rejection.*

An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate a preference or preferences among the plans so accepted.

*(d) Acceptance or rejection by partially secured creditor.*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.

**Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case.**

*(a) Modification of Plan Before Confirmation.* In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

*(b) Modification of Plan After Confirmation in Individual Debtor Case.* If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

(Amended Aug. 1, 1987; Aug. 1, 1993; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

The 2005 amendments to § 1127 of the Code provide for modification of a confirmed plan in a chapter 11 case. Therefore, the rule is amended to establish the procedure for filing and objecting to a proposed modification of a confirmed plan. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]



**Rule 3020. Deposit; Confirmation of Plan in a Chapter 9 Municipality or Chapter 11 Reorganization Case.**

(a) *Deposit.* In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

(b) *Objection to and hearing on confirmation in a Chapter 9 or Chapter 11 case.*

(1) *Objection.* An objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the proponent of the plan, any committee appointed under the Code, and any other entity designated by the court, within a time fixed by the court. Unless the case is a chapter 9 municipality case, a copy of every objection to confirmation shall be transmitted by the objecting party to the United States trustee within the time fixed for filing objections. An objection to confirmation is governed by Rule 9014.

(2) *Hearing.* The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues.

(c) *Order of confirmation.*

(1) The order of confirmation shall conform to the appropriate Official Form. If the plan provides for an injunction against conduct not otherwise enjoined under the Code, the order of confirmation shall (1) describe in reasonable detail all acts enjoined; (2) be specific in its terms regarding the injunction; and (3) identify the entities subject to the injunction.

(2) Notice of entry of the order of confirmation shall be mailed promptly to the debtor, the trustee, creditors, equity security holders, other parties in interest, and, if known, to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code.

(3) Except in a chapter 9 municipality case, notice of entry of the order of confirmation shall be transmitted to the United States trustee as provided in Rule 2002(k).

(d) *Retained power.* Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.

(e) *Stay of confirmation order.* An order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 3021. Distribution Under Plan.**

Except as provided in Rule 3020(e), after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed, to interest holders whose interests have not been disallowed, and to indenture trustees who have filed claims under Rule 3003(c)(5) that have been allowed. For purposes of this rule, creditors include holders of bonds, debentures, notes, and other debt securities, and interest holders include the holders of

stock and other equity securities, of record at the time of commencement of distribution unless a different time is fixed by the plan or the order confirming the plan.

### **Rule 3022. Final Decree in Chapter 11 Reorganization Case.**

After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.

## **PART IV — THE DEBTOR: DUTIES AND BENEFITS**

### **Rule 4001. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements.**

(a) *Relief from stay; prohibiting or conditioning the use, sale, or lease of property.*

(1) *Motion.* A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

(2) *Ex parte relief.* Relief from a stay under § 362(a) or a request to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) may be granted without prior notice only if (A) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or the attorney for the adverse party can be heard in opposition, and (B) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief under this subdivision and § 362(f) or § 363(e) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such adverse party or parties a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay or reconsideration of the order prohibiting or conditioning the use, sale, or lease of property. In that event, the court shall proceed expeditiously to hear and determine the motion.

(3) *Stay of order.* An order granting a motion for relief from an automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.

(b) *Use of cash collateral.*

(1) *Motion; service.*

(A) *Motion.* A motion for authority to use cash collateral shall be made in accordance with Rule 9014 and shall be accompanied by a proposed form of order.

(B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions, including:

- (i) the name of each entity with an interest in the cash collateral;
- (ii) the purposes for the use of the cash collateral;
- (iii) the material terms, including duration, of the use of the cash collateral; and
- (iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected.

(C) *Service.* The motion shall be served on: (1) any entity with an interest in the cash collateral; (2) any committee elected under § 705 or appointed under § 1102 of



the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, the creditors included on the list filed under Rule 1007(d); and (3) any other entity that the court directs.

(2) *Hearing.* The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

(c) *Obtaining credit.*

(1) *Motion; service.*

(A) *Motion.* A motion for authority to obtain credit shall be made in accordance with Rule 9014 and shall be accompanied by a copy of the credit agreement and a proposed form of order.

(B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the proposed credit agreement and form of order, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. If the proposed credit agreement or form of order includes any of the provisions listed below, the concise statement shall also: briefly list or summarize each one; identify its specific location in the proposed agreement and form of order; and identify any such provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Rule 4001(c)(2). In addition, the motion shall describe the nature and extent of each provision listed below:

(i) a grant of priority or a lien on property of the estate under § 364(c) or (d);

(ii) the providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim;

(iii) a determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim;

(iv) a waiver or modification of Code provisions or applicable rules relating to the automatic stay;

(v) a waiver or modification of any entity's authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364;

(vi) the establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order;

(vii) a waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien;

(viii) a release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action;

(ix) the indemnification of any entity;

(x) a release, waiver, or limitation of any right under § 506(c); or

(xi) the granting of a lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).

(C) *Service.* The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of



unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity that the court directs.

(2) *Hearing.* The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

(3) *Notice.* Notice of hearing pursuant to this subdivision shall be given to the parties on whom service of the motion is required by paragraph (1) of this subdivision and to such other entities as the court may direct.

(d) *Agreement relating to relief from the automatic stay, prohibiting or conditioning the use, sale, or lease of property, providing adequate protection, use of cash collateral, and obtaining credit.*

(1) *Motion; service.*

(A) *Motion.* A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

- (i) an agreement to provide adequate protection;
- (ii) an agreement to prohibit or condition the use, sale, or lease of property;
- (iii) an agreement to modify or terminate the stay provided for in § 362;
- (iv) an agreement to use cash collateral; or
- (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property.

(B) *Contents.* The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents, of all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision.

(C) *Service.* The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs.

(2) *Objection.* Notice of the motion and the time within which objections may be filed and served on the debtor in possession or trustee shall be mailed to the parties on whom service is required by paragraph (1) of this subdivision and to such other entities as the court may direct. Unless the court fixes a different time, objections may be filed within 14 days of the mailing of the notice.

(3) *Disposition; Hearing.* If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

(4) *Agreement in settlement of motion.* The court may direct that the procedures prescribed in paragraphs (1), (2), and (3) of this subdivision shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to subdivisions (a), (b), or (c) of this rule was sufficient to afford reasonable notice of the material provisions of the agreement and opportunity for a hearing.

(Amended by order adopted April 30, 2001, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009; amended, effective December 1, 2010.)

### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Subdivision (d).** Subdivision (d) is amended to implement changes in connection with the 2009 amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadlines in subdivision (d)(2) and (d)(3) are amended to substitute deadlines that are multiples of seven days. Throughout the rules, deadlines have been amended in the following manner:

- 5 day periods become 7 day periods
- 10 day periods become 14 day periods
- 15 day periods become 14 day periods
- 20 day periods become 21 day periods
- 25 day periods become 28 day periods [12/1/10]

### Rule 4002. Duties of Debtor.

(a) *In General.* In addition to performing other duties prescribed by the Code and rules, the debtor shall:

- (1) attend and submit to an examination at the times ordered by the court;
- (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness;
- (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007;
- (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate; and
- (5) file a statement of any change of the debtor's address.

(b) *Individual Debtor's Duty to Provide Documentation.*

(1) *Personal Identification.* Every individual debtor shall bring to the meeting of creditors under § 341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

(2) *Financial Information.* Every individual debtor shall bring to the meeting of creditors under § 341, and make available to the trustee, the following documents or copies of them, or provide a written statement that the documentation does not exist or is not in the debtor's possession:

(A) evidence of current income such as the most recent payment advice;

(B) unless the trustee or the United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts, including checking, savings, and money market accounts, mutual funds and brokerage accounts for the time period that includes the date of the filing of the petition; and

(C) documentation of monthly expenses claimed by the debtor if required by § 707(b)(2)(A) or (B).

(3) *Tax Return.* At least 7 days before the first date set for the meeting of creditors under § 341, the debtor shall provide to the trustee a copy of the debtor's federal income tax return for the most recent tax year ending immediately before the commencement of



the case and for which a return was filed, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(4) *Tax Returns Provided to Creditors.* If a creditor, at least 14 days before the first date set for the meeting of creditors under § 341, requests a copy of the debtor's tax return that is to be provided to the trustee under subdivision (b)(3), the debtor, at least 7 days before the first date set for the meeting of creditors under § 341, shall provide to the requesting creditor a copy of the return, including any attachments, or a transcript of the tax return, or provide a written statement that the documentation does not exist.

(5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.

(Amended Aug. 1, 1987; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

This rule is amended to implement § 521(a)(1)(B)(iv) and (e)(2), added to the Code by the 2005 amendments. These Code amendments expressly require the debtor to file with the court, or provide to the trustee, specific documents. The amendments to the rule implement these obligations and establish a time frame for creditors to make requests for a copy of the debtor's federal income tax return. The rule also requires the debtor to provide documentation in support of claimed expenses under § 707(b)(2)(A) and (B).

Subdivision (b) of the rule is also amended to require the debtor to cooperate with the trustee by providing materials and documents necessary to assist the trustee in the performance of the trustee's duties. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521, or to limit the access of the Attorney General to any information provided by the debtor in the case. Subdivision (b)(2) does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor possesses. Under subdivision (b)(2)(B), the trustee or the United States trustee can instruct debtors that they need not provide the documents described in that subdivision. Under subdivisions (b)(3) and (b)(4), the debtor must obtain and provide copies of tax returns or tax transcripts to the appropriate person, unless no such documents exist. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials provided to the trustee would not be made available to any other party in interest at the § 341 meeting of creditors other than the Attorney General. Some of the documents may contain otherwise private information that should not be disseminated. For example, pay stubs and financial account statements might include the social-security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. The debtor should redact all but the last four digits of all social-security numbers and the names of any minors when they appear in these documents. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.

Tax information produced under this rule is subject to procedures for safeguarding confidentiality established by the Director of the Administrative Office of the United States Courts. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods



- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### Rule 4003. Exemptions.

(a) *Claim of Exemptions.* A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) *Objecting to a Claim of Exemptions.*

(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney.

(3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.

(4) A copy of any objection shall be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney.

(c) *Burden of Proof.* In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) *Avoidance by Debtor of Transfers of Exempt Property.* A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 2000; October 17, 2005; Dec. 1, 2008.)

### COMMENT

Subdivision (b) is rewritten to include four subparagraphs.

Subdivision (b)(2) is added to the rule to permit the trustee to object to an exemption at any time up to one year after the closing of the case if the debtor fraudulently claimed the exemption. Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate. However, similar to the deadline set in § 727(e) of the Code for revoking a discharge which was fraudulently obtained, an objection to an exemption that was fraudulently claimed must be filed within one year after the closing of the case. Subdivision (b)(2) extends the objection deadline only for trustees.

Subdivision (b)(3) is added to the rule to reflect the addition of subsection (q) to § 522 of the Code by the 2005 Act. Section 522(q) imposes a \$ 136,875 limit on a state homestead exemption if the debtor has been convicted of a felony or owes a debt arising from certain causes of action. Other revised provisions of the Code, such as § 727(a)(12) and § 1328(h), suggest that the court may consider issues relating to § 522(q) late in the case, and the 30-day period for objections would not be appropriate for this provision.

Subdivision (d) is amended to clarify that a creditor with a lien on property that the debtor is attempting to avoid on the grounds that the lien impairs an exemption may raise in defense to the lien avoidance action any objection to the debtor's claimed exemption. The right to object is limited to an objection to the exemption of the property subject to the lien and for purposes of the lien avoidance action only. The creditor may not object to other exemption claims made by the debtor. Those objections, if any, are governed by Rule 4003(b).

Other changes are stylistic. [12/1/08]

#### **Rule 4004. Grant or Denial of Discharge.**

(a) *Time for Objecting to Discharge; Notice of Time Fixed.* In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (a)(9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

(b) *Extension of Time.*

(1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.

(2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

(c) *Grant of Discharge.*

(1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

(A) the debtor is not an individual;

(B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor's favor;

(C) the debtor has filed a waiver under § 727(a)(10);

(D) a motion to dismiss the case under § 707 is pending;

(E) a motion to extend the time for filing a complaint objecting to the discharge is pending;

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending;

(G) the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930(a) and any other fee prescribed by the Judicial Conference of the United States under 28 U.S.C. § 1930(b) that is payable to the clerk upon the commencement of a case under the Code, unless the court has waived the fees under 28 U.S.C. § 1930(f);

(H) the debtor has not filed with the court a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7);

(I) a motion to delay or postpone discharge under § 727(a)(12) is pending;

(J) a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending;

(K) a presumption has arisen under § 524(m) that a reaffirmation agreement is an undue hardship; or

(L) a motion is pending to delay discharge, because the debtor has not filed with the court all tax documents required to be filed under § 521(f).



(2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

(3) If the debtor is required to file a statement under Rule 1007(b)(8), the court shall not grant a discharge earlier than 30 days after the statement is filed.

(4) In a chapter 11 case in which the debtor is an individual, or a chapter 13 case, the court shall not grant a discharge if the debtor has not filed any statement required by Rule 1007(b)(7).

(d) *Applicability of Rules in Part VII and Rule 9014.* An objection to discharge is governed by Part VII of these rules, except that an objection to discharge under §§ 727(a)(8), (a)(9), or 1328(f) is commenced by motion and governed by Rule 9014.

(e) *Order of Discharge.* An order of discharge shall conform to the appropriate Official Form.

(f) *Registration in Other Districts.* An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.

(g) *Notice of Discharge.* The clerk shall promptly mail a copy of the final order of discharge to those specified in subdivision (a) of this rule.

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1996; Dec. 1, 1999; Dec. 1, 2000; Dec. 1, 2002; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009; amended, effective December 1, 2010; amended by order adopted April 26, 2011, effective December 1, 2011.)

#### COMMENT

**Subdivision (b).** — Subdivision (b) is amended to allow a party, under certain specified circumstances, to seek an extension of time to object to discharge after the time for filing has expired. This amendment addresses the situation in which there is a gap between the expiration of the time for objecting to discharge and the entry of the discharge order. If, during that period, a party discovers facts that would provide grounds for revocation of discharge, it may not be able to seek revocation under § 727(d) of the Code because the facts would have been known prior to the granting of the discharge. Furthermore, during that period the debtor may commit an act that provides a basis for both denial and revocation of the discharge. In those situations, subdivision (b)(2) allows a party to file a motion for an extension of time to object to discharge based on those facts so long as they were not known to the party before expiration of the deadline for objecting. The motion must be filed promptly after discovery of those facts.

Subdivision (c)(1)(G) is amended to reflect the fee waiver provision in 28 U.S.C. § 1930, added by the 2005 amendments.

Subdivision (c)(1)(H) is new. It reflects the 2005 addition to the Code of §§ 727(a)(11) and 1328(g), which require that individual debtors complete a course in personal financial management as a condition to the entry of a discharge. Including this requirement in the rule helps prevent the inadvertent entry of a discharge when the debtor has not complied with this requirement. If a debtor fails to file the required statement regarding a personal financial management course, the clerk will close the bankruptcy case without the entry of a discharge.

Subdivision (c)(1)(I) is new. It reflects the 2005 addition to the Code of § 727(a)(12). This provision is linked to § 522(q). Section 522(q) limits the availability of the homestead exemption for individuals who have been convicted of a felony or who owe a debt arising from certain causes of action within a particular time frame. The existence of reasonable cause to believe that § 522(q) may be applicable to the debtor constitutes grounds for withholding the discharge.

Subdivision (c)(1)(J) is new. It accommodates the deadline for filing a reaffirmation agreement established by Rule 4008(a).

Subdivision (c)(1)(L) is new. It implements § 1228(a) of Public Law Number 109-8, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of



2005, which prohibits entry of a discharge unless required tax documents have been provided to the court.

Subdivision (c)(3) is new. It postpones the entry of the discharge of an individual debtor in a case under chapter 11, 12, or 13 if there is a question as to the applicability of § 522(q) of the Code. The postponement provides an opportunity for a creditor to file a motion to limit the debtor's exemption under that provision:

Other changes are stylistic. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Subdivision (a).** Subdivision (a) is amended to include a deadline for filing a motion objecting to a debtor's discharge under §§ 727(a)(8), (a)(9), or 1328(f) of the Code. These sections establish time limits on the issuance of discharges in successive bankruptcy cases by the same debtor.

**Subdivision (c).** Subdivision (c)(1) is amended because a corresponding amendment to subdivision (d) directs certain objections to discharge to be brought by motion rather than by complaint. Subparagraph (c)(1)(B) directs the court not to grant a discharge if a motion or complaint objecting to discharge has been filed unless the objection has been decided in the debtor's favor.

Subdivision (c)(4) is new. It directs the court in chapter 11 and 13 cases to withhold the entry of the discharge if an individual debtor has not filed a statement of completion of a course concerning personal financial management as required by Rule 1007(b)(7).

**Subdivision (d).** Subdivision (d) is amended to direct that objections to discharge under §§ 727(a)(8), (a)(9), and 1328(f) be commenced by motion rather than by complaint. Objections under the specified provisions are contested matters governed by Rule 9014. The title of the subdivision is also amended to reflect this change.

Changes Made After Publication:

Subdivision (d) was amended to provide that objections to discharge under §§ 727(a)(8), (a)(9), and 1328(f) are commenced by motion rather than by complaint and are governed by Rule 9014. Because of the relocation of this provision from the previously proposed Rule 7001 (b), subdivisions (a) and (c)(1) of this rule were revised to change references to "motion under Rule 7001(b)" to "motion under § 727(a)(8) or (a)(9)." Other stylistic changes were made to the rule, and the Committee Note was revised to reflect these changes. [12/1/10]

### **Rule 4005. Burden of Proof in Objecting to Discharge.**

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving the objection.

### **Rule 4006. Notice of No Discharge.**

If an order is entered: denying a discharge; revoking a discharge; approving a waiver of discharge; or, in the case of an individual debtor, closing the case without the entry of a discharge, the clerk shall promptly notify all parties in interest in the manner provided by Rule 2002.

(Amended Aug. 1, 1987; October 17, 2005; Dec. 1, 2008.)

**COMMENT**

This amendment was necessary because the 2005 amendments to the Code require that individual debtors in a chapter 7 or 13 case complete a course in personal financial management as a condition to the entry of a discharge. If the debtor fails to complete the course, the case may be closed and no discharge will be entered. Reopening the case is governed by § 350 and Rule 5010. The rule is amended to provide notice to parties in interest, including the debtor, that no discharge was entered. [12/1/08]

**Rule 4007. Determination of Dischargeability of a Debt.**

(a) *Persons Entitled to File Complaint.* A debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.

(b) *Time for Commencing Proceeding Other Than Under § 523(c) of the Code.* A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) *Time for Filing Complaint Under § 523(c) in a Chapter 7 Liquidation, Chapter 11 Reorganization, Chapter 12 Family Farmer's Debt Adjustment Case, or Chapter 13 Individual's Debt Adjustment Case; Notice of Time Fixed.* Except as otherwise provided in subdivision (d), a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(d) *Time for Filing Complaint Under § 523(a)(6) in Chapter 13 Individual's Debt Adjustment Case; Notice of Time Fixed.* On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing the time to file a complaint to determine the dischargeability of any debt under § 523(a)(6) and shall give no less than 30 days' notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

(e) *Applicability of Rules in Part VII.* A proceeding commenced by a complaint filed under this rule is governed by Part VII of these rules.

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1999; October 17, 2005; Dec. 1, 2008.)

**COMMENT**

Subdivision (c) is amended because of the 2005 amendments to § 1328(a) of the Code. This revision expands the exceptions to discharge upon completion of a chapter 13 plan. Subdivision (c) extends to chapter 13 the same time limits applicable to other chapters of the Code with respect to the two exceptions to discharge that have been added to § 1328(a) and that are within § 523(c).

The amendment to subdivision (d) reflects the 2005 amendments to § 1328(a) that expands the exceptions to discharge upon completion of a chapter 13 plan, including two out of three of the provisions that fall within § 523(c). However, the 2005 revisions to § 1328(a) do not include a reference to § 523(a)(6), which is the third provision to which § 523(c) refers. Thus, subdivision (d) is now limited to that provision. [12/1/08]

**Rule 4008. Filing of Reaffirmation Agreement; Statement in Support of Reaffirmation Agreement.**

(a) *Filing of Reaffirmation Agreement.* A reaffirmation agreement shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) of the Code. The reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed



by the appropriate Official Form. The court may, at any time and in its discretion, enlarge the time to file a reaffirmation agreement.

(b) *Statement in Support of Reaffirmation Agreement.* The debtor's statement required under § 524(k)(6)(A) of the Code shall be accompanied by a statement of the total income and expenses stated on schedules I and J. If there is a difference between the total income and expenses stated on those schedules and the statement required under § 524(k)(6)(A), the statement required by this subdivision shall include an explanation of the difference.

(Amended Aug. 1, 1991; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

This rule is amended to establish a deadline for filing reaffirmation agreements. The Code sets out a number of prerequisites to the enforceability of reaffirmation agreements. Among those requirements, § 524(k)(6)(A) provides that each reaffirmation agreement must be accompanied by a statement indicating the debtor's ability to make the payments called for by the agreement. In the event that this statement reflects an insufficient income to allow payment of the reaffirmed debt, § 524(m) provides that a presumption of undue hardship arises, allowing the court to disapprove the reaffirmation agreement, but only after a hearing conducted prior to the entry of discharge. Rule 4004(c)(1)(K) accommodates this provision by delaying the entry of discharge where a presumption of undue hardship arises. However, in order for that rule to be effective, the reaffirmation agreement itself must be filed before the entry of discharge. Under Rule 4004(c)(1), discharge is to be entered promptly after the expiration of the time for filing a complaint objecting to discharge, which, under Rule 4004(a), is 60 days after the first date set for the meeting of creditors under § 341(a). Accordingly, that date is set as the deadline for filing a reaffirmation agreement.

Any party may file the agreement with the court. Thus, whichever party has a greater incentive to enforce the agreement usually will file it. In the event that the parties are unable to file a reaffirmation agreement in a timely fashion, the rule grants the court broad discretion to permit a late filing. A corresponding change to Rule 4004(c)(1)(J) accommodates such an extension by providing for a delay in the entry of discharge during the pendency of a motion to extend the time for filing a reaffirmation agreement.

Rule 4008 is also amended by deleting provisions regarding the timing of any reaffirmation and discharge hearing. As noted above, § 524(m) itself requires that hearings on undue hardship be conducted prior to the entry of discharge. In other respects, including hearings to approve reaffirmation agreements of unrepresented debtors under § 524(c)(6), the rule leaves discretion to the court to set the hearing at a time appropriate for the particular circumstances presented in the case and consistent with the scheduling needs of the parties. [12/1/08]

Subdivision (a) of the rule is amended to require that the entity filing the reaffirmation agreement with the court also include Official Form 27, the Reaffirmation Agreement Cover Sheet. The form includes information necessary for the court to determine whether the proposed reaffirmation agreement is presumed to be an undue hardship for the debtor under § 524(m) of the Code. [12/1/09]

## PART V — COURTS AND CLERKS

### Rule 5001. Courts and Clerks' Offices.

#### (a) *Courts always open.*

The courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

#### (b) *Trials and hearings; orders in chambers.*



All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. Except as otherwise provided in 28 U.S.C. § 152(c), all other acts or proceedings may be done or conducted by a judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) *Clerk's office.*

The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 9006(a).

(Amended Dec. 1, 2008.)

### COMMENT

The rule is amended to permit bankruptcy judges to hold hearings outside of the district in which the case is pending to the extent that the circumstances lead to the authorization of the court to take such action under the 2005 amendment to 28 U.S.C. § 152(c). Under that provision, bankruptcy judges may hold court outside of their districts in emergency situations and when the business of the court otherwise so requires. This amendment to the rule is intended to implement the legislation. [12/1/08]

### **Rule 5002. Restrictions on Approval of Appointments.**

(a) *Approval of appointment of relatives prohibited.*

The appointment of an individual as a trustee or examiner pursuant to § 1104 of the Code shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the appointment or the United States trustee in the region in which the case is pending. The employment of an individual as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 shall not be approved by the court if the individual is a relative of the bankruptcy judge approving the employment. The employment of an individual as attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 may be approved by the court if the individual is a relative of the United States trustee in the region in which the case is pending, unless the court finds that the relationship with the United States trustee renders the employment improper under the circumstances of the case. Whenever under this subdivision an individual may not be approved for appointment or employment, the individual's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof also may not be approved for appointment or employment.

(b) *Judicial determination that approval of appointment or employment is improper.*

A bankruptcy judge may not approve the appointment of a person as a trustee or examiner pursuant to § 1104 of the Code or approve the employment of a person as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to §§ 327, 1103, or 1114 of the Code if that person is or has been so connected with such judge or the United States trustee as to render the appointment or employment improper.

### **Rule 5003. Records Kept By the Clerk.**

(a) *Bankruptcy Dockets.* The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

(b) *Claims Register.* The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.

(c) *Judgments and Orders.* The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept. On

request of the prevailing party, a correct copy of every judgment or order affecting title to or lien upon real or personal property or for the recovery of money or property shall be kept and indexed with the civil judgments of the district court.

(d) *Index of Cases; Certificate of Search.* The clerk shall keep indices of all cases and adversary proceedings as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in the clerk's custody and certify whether a case or proceeding has been filed in or transferred to the court or if a discharge has been entered in its records.

(e) *Register of Mailing Addresses of Federal and State Governmental Units and Certain Taxing Authorities.* The United States or the state or territory in which the court is located may file a statement designating its mailing address. The United States, state, territory, or local governmental unit responsible for collecting taxes within the district in which the case is pending may also file a statement designating an address for service of requests under § 505(b) of the Code, and the designation shall describe where further information concerning additional requirements for filing such requests may be found. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a register that includes the mailing addresses designated under the first sentence of this subdivision, and a separate register of the addresses designated for the service of requests under § 505(b) of the Code. The clerk is not required to include in any single register more than one mailing address for each department, agency, or instrumentality of the United States or the state or territory. If more than one address for a department, agency, or instrumentality is included in the register, the clerk shall also include information that would enable a user of the register to determine the circumstances when each address is applicable, and mailing notice to only one applicable address is sufficient to provide effective notice. The clerk shall update the register annually, effective January 2 of each year. The mailing address in the register is conclusively presumed to be a proper address for the governmental unit, but the failure to use that mailing address does not invalidate any notice that is otherwise effective under applicable law.

(f) *Other Books and Records of the Clerk.* The clerk shall keep any other books and records required by the Director of the Administrative Office of the United States Courts.

(Amended Aug. 1, 1987; Dec. 1, 2000; October 17, 2005; Dec. 1, 2008.)

#### COMMENT

The rule is amended to implement § 505(b)(1) of the Code added by the 2005 amendments, which allows a taxing authority to designate an address to use for the service of requests under that subsection. Under the amendment, the clerk is directed to maintain a separate register for mailing addresses of governmental units solely for the service of requests under § 505(b). This register is in addition to the register of addresses of governmental units already maintained by the clerk. The clerk is required to keep only one address for a governmental unit in each register. [12/1/08]

#### Rule 5004. Disqualification.

(a) *Disqualification of judge.*

A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.

(b) *Disqualification of judge from allowing compensation.*

A bankruptcy judge shall be disqualified from allowing compensation to a person who is a relative of the bankruptcy judge or with whom the judge is so connected as to render it improper for the judge to authorize such compensation.

#### Rule 5005. Filing and Transmittal of Papers.

(a) *Filing.*



(1) *Place of filing.* The lists, schedules, statements, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1409, shall be filed with the clerk in the district where the case under the Code is pending. The judge of that court may permit the papers to be filed with the judge, in which event the filing date shall be noted thereon, and they shall be forthwith transmitted to the clerk. The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

(2) *Filing by electronic means.* A court may by local rule permit or require documents to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A document filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules, the Federal Rules of Civil Procedure made applicable by these rules, and § 107 of the Code.

(b) *Transmittal to the United States Trustee.*

(1) The complaints, motions, applications, objections and other papers required to be transmitted to the United States trustee by these rules shall be mailed or delivered to an office of the United States trustee, or to another place designated by the United States trustee, in the district where the case under the Code is pending.

(2) The entity, other than the clerk, transmitting a paper to the United States trustee shall promptly file as proof of such transmittal a verified statement identifying the paper and stating the date on which it was transmitted to the United States trustee.

(3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.

(c) *Error in filing or transmittal.*

A paper intended to be filed with the clerk but erroneously delivered to the United States trustee, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. A paper intended to be transmitted to the United States trustee but erroneously delivered to the clerk, the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, the clerk of the bankruptcy appellate panel, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the United States trustee. In the interest of justice, the court may order that a paper erroneously delivered shall be deemed filed with the clerk or transmitted to the United States trustee as of the date of its original delivery.

(Amended by order adopted April 12, 2006, effective December 1, 2006.)

### **Rule 5006. Certification of Copies of Papers.**

The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the clerk on payment of any prescribed fee.

### **Rule 5007. Record of Proceedings and Transcripts.**

(a) *Filing of record or transcript.*

The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy.

(b) *Transcript fees.*

The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk.



(c) *Admissibility of record in evidence.*

A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

**Rule 5008. Notice Regarding Presumption of Abuse in Chapter 7 Cases of Individual Debtors.**

If a presumption of abuse has arisen under § 707(b) in a chapter 7 case of an individual with primarily consumer debts, the clerk shall within 10 days after the date of the filing of the petition notify creditors of the presumption of abuse in accordance with Rule 2002. If the debtor has not filed a statement indicating whether a presumption of abuse has arisen, the clerk shall within 10 days after the date of the filing of the petition notify creditors that the debtor has not filed the statement and that further notice will be given if a later filed statement indicates that a presumption of abuse has arisen. If a debtor later files a statement indicating that a presumption of abuse has arisen, the clerk shall notify creditors of the presumption of abuse as promptly as practicable.

(Abrogated Aug. 1, 1991; added, October 17, 2005; Dec. 1, 2008.)

**COMMENT**

This rule is new. The 2005 amendments to § 342 of the Code require that clerks give written notice to all creditors not later than 10 days after the date of the filing of the petition that a presumption of abuse has arisen under § 707(b). A statement filed by the debtor will be the source of the clerk's information about the presumption of abuse. This rule enables the clerk to meet its obligation to send the notice within the statutory time period set forth in § 342. In the event that the court receives the debtor's statement after the clerk has sent the first notice, and the debtor's statement indicates a presumption of abuse, the rule requires that the clerk send a second notice. [12/1/08]

**Rule 5009. Closing Chapter 7 Liquidation, Chapter 12 Family Farmer's Debt Adjustment, Chapter 13 Individual's Debt Adjustment, and Chapter 15 Ancillary and Cross-Border Cases.**

(a) *Cases Under Chapters 7, 12, and 13.* If in a chapter 7, chapter 12, or chapter 13 case the trustee has filed a final report and final account and has certified that the estate has been fully administered, and if within 30 days no objection has been filed by the United States trustee or a party in interest, there shall be a presumption that the estate has been fully administered.

(b) *Notice of Failure to File Rule 1007(b)(7) Statement.* If an individual debtor in a chapter 7 or 13 case has not filed the statement required by Rule 1007(b)(7) within 45 days after the first date set for the meeting of creditors under § 341(a) of the Code, the clerk shall promptly notify the debtor that the case will be closed without entry of a discharge unless the statement is filed within the applicable time limit under Rule 1007(c).

(c) *Cases Under Chapter 15.* A foreign representative in a proceeding recognized under § 1517 of the Code shall file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.

(Amended, effective December 1, 2010.)

### COMMENT

**Subdivisions (a) and (b).** The rule is amended to redesignate the former rule as subdivision (a) and to add new subdivisions (b) and (c) to the rule. Subdivision (b) requires the clerk to provide notice to an individual debtor in a chapter 7 or 13 case that the case may be closed without the entry of a discharge due to the failure of the debtor to file a timely statement of completion of a personal financial management course. The purpose of the notice is to provide the debtor with an opportunity to complete the course and file the appropriate document prior to the filing deadline. Timely filing of the document avoids the need for a motion to extend the time retroactively. It also avoids the potential for closing the case without discharge, and the possible need to pay an additional fee in connection with reopening. Timely filing also benefits the clerk's office by reducing the number of instances in which cases must be reopened.

**Subdivision (c).** Subdivision (c) requires a foreign representative in a chapter 15 case to file a final report setting out the foreign representative's actions and results obtained in the United States court. It also requires the foreign representative to give notice of the filing of the report, and provides interested parties with 30 days to object to the report after the foreign representative has certified that notice has been given. In the absence of a timely objection, a presumption arises that the case is fully administered, and the case may be closed. [12/1/10]

### Rule 5010. Reopening Cases.

A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code. In a chapter 7, 12, or 13 case a trustee shall not be appointed by the United States trustee unless the court determines that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the case.

### Rule 5011. Withdrawal and Abstention from Hearing a Proceeding.

*(a) Withdrawal.*

A motion for withdrawal of a case or proceeding shall be heard by a district judge.

*(b) Abstention from hearing a proceeding.*

A motion for abstention pursuant to 28 U.S.C. § 1334(c) shall be governed by Rule 9014 and shall be served on the parties to the proceeding.

*(c) Effect of filing of motion for withdrawal or abstention.*

The filing of a motion for withdrawal of a case or proceeding or for abstention pursuant to 28 U.S.C. § 1334(c) shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion. A motion for a stay ordinarily shall be presented first to the bankruptcy judge. A motion for a stay or relief from a stay filed in the district court shall state why it has not been presented to or obtained from the bankruptcy judge. Relief granted by the district judge shall be on such terms and conditions as the judge deems proper.

### Rule 5012. Agreements Concerning Coordination of Proceedings in Chapter 15 Cases.

Approval of an agreement under § 1527(4) of the Code shall be sought by motion. The movant shall attach to the motion a copy of the proposed agreement or protocol and, unless the court directs otherwise, give at least 30 days' notice of any hearing on the motion by transmitting the motion to the United States trustee, and serving it on the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all entities against whom provisional relief is being sought under § 1519, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct.



(Added, effective December 1, 2010.)

### COMMENT

This rule is new. In chapter 15 cases, any party in interest may seek approval of an agreement, frequently referred to as a “protocol,” that will assist with the conduct of the case. Because the needs of the courts and the parties may vary greatly from case to case, the rule does not attempt to limit the form or scope of a protocol. Rather, the rule simply requires that approval of a particular protocol be sought by motion, and designates the persons entitled to notice of the hearing on the motion. These agreements, or protocols, drafted entirely by parties in interest in the case, are intended to provide valuable assistance to the court in the management of the case. Interested parties may find guidelines published by organizations, such as the American Law Institute and the International Insolvency Institute, helpful in crafting agreements or protocols to apply in a particular case. [12/1/10]

## PART VI — COLLECTION AND LIQUIDATION OF THE ESTATE

### Rule 6001. Burden of Proof as to Validity of Postpetition Transfer.

Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.

### Rule 6002. Accounting by Prior Custodian of Property of the Estate.

#### (a) *Accounting required.*

Any custodian required by the Code to deliver property in the custodian’s possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.

#### (b) *Examination of administration.*

On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

### Rule 6003. Interim and Final Relief Immediately Following the Commencement of the Case — Applications for Employment; Motions for Use, Sale, or Lease of Property; and Motions for Assumption or Assignment of Executory Contracts.

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following:

(a) an application under Rule 2014;

(b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001; or

(c) a motion to assume or assign an executory contract or unexpired lease in accordance with § 365.

(Adopted by order effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009; amended by order adopted April 26, 2011, effective December 1, 2011.)

### COMMENT

The rule is amended to clarify that it limits the timing of the entry of certain orders, but does not prevent the court from providing an effective date for such an order that may



relate back to the time of the filing of the application or motion, or to some other date. For example, while the rule prohibits, absent immediate and irreparable harm, the court from authorizing the employment of counsel during the first 21 days of a case, it does not prevent the court from providing in an order entered after expiration of the 21-day period that the relief requested in the motion or application is effective as of a date earlier than the issuance of the order. Nor does it prohibit the filing of an application or motion for relief prior to expiration of the 21-day period. Nothing in the rule prevents a professional from representing the trustee or a debtor in possession pending the approval of an application for the approval of the employment under Rule 2014.

The amendment also clarifies that the scope of the rule is limited to granting the specifically identified relief set out in the subdivisions of the rule. Deleting “regarding” from the rule clarifies that the rule does not prohibit the court from entering orders in the first 21 days of the case that may relate to the motions and applications set out in (a), (b), and (c); it is only prohibited from granting the relief requested by those motions or applications. For example, in the first 21 days of the case, the court could grant the relief requested in a motion to establish bidding procedures for the sale of property of the estate, but it could not, absent immediate and irreparable harm, grant a motion to approve the sale of property.

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 6004. Use, Sale, or Lease of Property.**

(a) *Notice of Proposed Use, Sale, or Lease of Property.* Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k) and, if applicable, in accordance with § 363(b)(2) of the Code.

(b) *Objection to Proposal.* Except as provided in subdivisions (c) and (d) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than seven days before the date set for the proposed action or within the time fixed by the court. An objection to the proposed use, sale, or lease of property is governed by Rule 9014.

(c) *Sale Free and Clear of Liens and Other Interests.* A motion for authority to sell property free and clear of liens or other interests shall be made in accordance with Rule 9014 and shall be served on the parties who have liens or other interests in the property to be sold. The notice required by subdivision (a) of this rule shall include the date of the hearing on the motion and the time within which objections may be filed and served on the debtor in possession or trustee.

(d) *Sale of Property Under \$2,500.* Notwithstanding subdivision (a) of this rule, when all of the nonexempt property of the estate has an aggregate gross value less than \$2,500, it shall be sufficient to give a general notice of intent to sell such property other than in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected pursuant to the Code, the United States trustee and other persons as the court may direct. An objection to any such sale may be filed and served by a party in interest within 14 days of the mailing of the notice, or within the time fixed by the court. An objection is governed by Rule 9014.

(e) *Hearing.* If a timely objection is made pursuant to subdivision (b) or (d) of this rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.

(f) *Conduct of Sale Not In the Ordinary Course of Business.*

(1) *Public or Private Sale.* All sales not in the ordinary course of business may be by private sale or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed on completion of a sale. If the property is sold by an auctioneer, the auctioneer shall file the statement, transmit a copy thereof to the United States trustee, and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement and transmit a copy thereof to the United States trustee.

(2) *Execution of Instruments.* After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.

(g) *Sale of Personally Identifiable Information.*

(1) *Motion.* A motion for authority to sell or lease personally identifiable information under § 363(b)(1)(B) shall include a request for an order directing the United States trustee to appoint a consumer privacy ombudsman under § 332. Rule 9014 governs the motion which shall be served on: any committee elected under § 705 or appointed under § 1102 of the Code, or if the case is a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list of creditors filed under Rule 1007(d); and on such other entities as the court may direct. The motion shall be transmitted to the United States trustee.

(2) *Appointment.* If a consumer privacy ombudsman is appointed under § 332, no later than seven days before the hearing on the motion under § 363(b)(1)(B), the United States trustee shall file a notice of the appointment, including the name and address of the person appointed. The United States trustee's notice shall be accompanied by a verified statement of the person appointed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

(h) *Stay of Order Authorizing Use, Sale, or Lease of Property.* An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1999; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The rule is amended by inserting a new subdivision (g) to implement §§ 332 and 363(b)(1)(B) of the Code, added by the 2005 amendments. This rule governs the proposed transfer of personally identifiable information in a manner inconsistent with any policy covering the transfer of the information. Rule 2002(c)(1) requires the seller to state in the notice of the sale or lease whether the transfer is consistent with and policy governing the transfer of the information.

Under § 332 of the Code, the consumer privacy ombudsman must be appointed at least five days prior to the hearing on a sale or lease of personally identifiable information. In an appropriate case, the consumer privacy ombudsman may seek a continuance of the hearing on the proposed sale to perform the tasks required of the ombudsman by § 332 of the Code.

Former subdivision (g) is redesignated as subdivision (h). [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods



- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 6005. Appraisers and Auctioneers.**

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.

### **Rule 6006. Assumption, Rejection or Assignment of an Executory Contract or Unexpired Leases.**

(a) *Proceeding to assume, reject, or assign.* A proceeding to assume, reject, or assign an executory contract or unexpired lease, other than as part of a plan, is governed by Rule 9014.

(b) *Proceeding to require trustee to act.* A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.

(c) *Notice.* Notice of a motion made pursuant to subdivision (a) or (b) of this rule shall be given to the other party to the contract or lease, to other parties in interest as the court may direct, and, except in a chapter 9 municipality case, to the United States trustee.

(d) *Stay of order authorizing assignment.* An order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.

(e) *Limitations.* The trustee shall not seek authority to assume or assign multiple executory contracts or unexpired leases in one motion unless: (1) all executory contracts or unexpired leases to be assumed or assigned are between the same parties or are to be assigned to the same assignee; (2) the trustee seeks to assume, but not assign to more than one assignee, unexpired leases of real property; or (3) the court otherwise authorizes the motion to be filed. Subject to subdivision (f), the trustee may join requests for authority to reject multiple executory contracts or unexpired leases in one motion.

(f) *Omnibus motions.* A motion to reject or, if permitted under subdivision (e), a motion to assume or assign multiple executory contracts or unexpired leases that are not between the same parties shall:

(1) state in a conspicuous place that parties receiving the omnibus motion should locate their names and their contracts or leases listed in the motion;

(2) list parties alphabetically and identify the corresponding contract or lease;

(3) specify the terms, including the curing of defaults, for each requested assumption or assignment;

(4) specify the terms, including the identity of each assignee and the adequate assurance of future performance by each assignee, for each requested assignment;

(5) be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases; and

(6) be limited to no more than 100 executory contracts or unexpired leases.

(g) *Finality of determination.* The finality of any order respecting an executory contract or unexpired lease included in an omnibus motion shall be determined as though such contract or lease had been the subject of a separate motion.

(Amended by order adopted April 30, 2007, effective December 1, 2007; amended by order adopted March 26, 2009, effective December 1, 2009.)



**COMMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 6007. Abandonment or Disposition of Property.**

(a) *Notice of proposed abandonment or disposition; objections; hearing.* Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 14 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct.

(b) *Motion by party in interest.* A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

(c) [Abrogated]

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 6008. Redemption of Property from Lien or Sale.**

On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

**Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession.**

With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.

**Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety.**

If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or

the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII.

### **Rule 6011. Disposal of Patient Records in Health Care Business Case.**

(a) *Notice by Publication Under § 351(1)(A).* A notice regarding the claiming or disposing of patient records under § 351(1)(A) shall not identify any patient by name or other identifying information, but shall:

- (1) identify with particularity the health care facility whose patient records the trustee proposes to destroy;
- (2) state the name, address, telephone number, email address, and website, if any, of a person from whom information about the patient records may be obtained;
- (3) state how to claim the patient records; and
- (4) state the date by which patient records must be claimed, and that if they are not so claimed the records will be destroyed.

(b) *Notice by Mail Under § 351(1)(B).* Subject to applicable nonbankruptcy law relating to patient privacy, a notice regarding the claiming or disposing of patient records under § 351(1)(B) shall, in addition to including the information in subdivision (a), direct that a patient's family member or other representative who receives the notice inform the patient of the notice. Any notice under this subdivision shall be mailed to the patient and any family member or other contact person whose name and address have been given to the trustee or the debtor for the purpose of providing information regarding the patient's health care, to the Attorney General of the State where the health care facility is located, and to any insurance company known to have provided health care insurance to the patient.

(c) *Proof of Compliance with Notice Requirement.* Unless the court orders the trustee to file proof of compliance with § 351(1)(B) under seal, the trustee shall not file, but shall maintain, the proof of compliance for a reasonable time.

(d) *Report of Destruction of Records.* The trustee shall file, no later than 30 days after the destruction of patient records under § 351(3), a report certifying that the unclaimed records have been destroyed and explaining the method used to effect the destruction. The report shall not identify any patient by name or other identifying information.

(Added, October 17, 2005; Dec. 1, 2008.)

### **COMMENT**

This rule is new. It implements § 351(1), which was added to the Code by the 2005 amendments. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

The variety of health care businesses and the range of current and former patients present the need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (a) of this rule lists the minimum requirements for notices given under § 351(1)(A), and subdivision (b) governs the form of notices under § 351(1)(B). Notices given under this rule are subject to provisions under applicable federal and state law that relate to the protection of patients' privacy, such as the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (HIPAA).

Subdivision (c) directs the trustee to maintain proof of compliance with § 351(1)(B), but because the proof of compliance may contain patient names that should or must remain confidential, it prohibits filing the proof of compliance unless the court orders the trustee to file it under seal.



Subdivision (d) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of patients are not to be included in the report to protect patient privacy. [12/1/08]

## **PART VII — ADVERSARY PROCEEDINGS**

### **Rule 7001. Scope of Rules of Part VII.**

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;

(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d);

(3) a proceeding to obtain approval under § 363(h) for the sale of both the interest of the estate and of a co-owner in property;

(4) a proceeding to object to or revoke a discharge, other than an objection to discharge under §§ 727(a)(8), (a)(9), or 1328(f);

(5) a proceeding to revoke an order of confirmation of a chapter 11, chapter 12, or chapter 13 plan;

(6) a proceeding to determine the dischargeability of a debt;

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

(8) a proceeding to subordinate any allowed claim or interest, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for subordination;

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; or

(10) a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452.

(Amended, effective December 1, 2010.)

### **COMMENT**

Paragraph (4) of the rule is amended to create an exception for objections to discharge under §§ 727(a)(8), (a)(9), and 1328(f) of the Code. Because objections to discharge on these grounds typically present issues more easily resolved than other objections to discharge, the more formal procedures applicable to adversary proceedings, such as commencement by a complaint, are not required. Instead, objections on these three grounds are governed by Rule 4004(d). In an appropriate case, however, Rule 9014(c) allows the court to order that additional provisions of Part VII of the rules apply to these matters.

#### **Changes Made After Publication:**

The proposed addition of subsection (b) was deleted, and the content of that provision was moved to Rule 4004(d). The exception in paragraph (4) of the rule was revised to refer to objections to discharge under §§ 727(a)(8), (a)(9), and 1328(f) of the Code. The redesignation of the existing rule as subdivision (a) was also deleted. The Committee Note was revised to reflect these changes. [12/1/10]

### **Rule 7002. References to Federal Rules of Civil Procedure.**

Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.



**Rule 7003. Commencement of Adversary Proceeding.**

Rule 3 F.R.Civ.P. applies in adversary proceedings.

**Rule 7004. Process; Service of Summons, Complaint.**

(a) *Summons; service; proof of service.*

(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(1), (e)-(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)-(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

(2) The clerk may sign, seal, and issue a summons electronically by putting an "s/" before the clerk's name and including the court's seal on the summons.

(b) *Service by first class mail.* Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)-(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state. The summons and complaint in that case shall be addressed to the person required to be served at that person's dwelling house or usual place of abode or at the place where the person regularly conducts a business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint addressed to the civil process clerk at the office of the United States attorney for the district in which the action is brought and by mailing a copy of the summons and complaint to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to that officer or agency. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule. The court shall allow a reasonable time for service pursuant to this subdivision for the purpose of curing the failure to mail a copy of the summons and complaint to multiple officers, agencies, or corporations of the United States if the plaintiff has mailed a copy of the summons and complaint either to the civil process clerk at the office of the United States attorney or to the Attorney General of the United States. If the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, service may be made as prescribed in paragraph (10) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is

made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.

(10) Upon the United States trustee, when the United States trustee is the trustee in the case and service is made upon the United States trustee solely as trustee, by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending.

(c) *Service by publication.* If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(e)-(j) F.R.Civ.P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail, postage prepaid, to the party's last known address, and by at least one publication in such manner and form as the court may direct.

(d) *Nationwide service of process.* The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

(e) *Summons: time limit for service within the United States.* Service made under Rule 4(e), (g), (h)(1), (i), or (j)(2) F. R. Civ. P. shall be by delivery of the summons and complaint within 14 days after the summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 14 days after the summons is issued. If a summons is not timely delivered or mailed, another summons shall be issued and served. This subdivision does not apply to service in a foreign country.

(f) *Personal jurisdiction.* If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule or the subdivisions of Rule 4 F.R.Civ.P. made applicable by these rules is effective to establish personal jurisdiction over the person of any defendant with respect to a case under the Code or a civil proceeding arising under the Code, or arising in or related to a case under the Code.

(g) *Service on Debtor's Attorney.* If the debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service shall also be made upon the debtor's attorney by any means authorized under Rule 5(b) F. R. Civ. P.

(h) *Service of process on an insured depository institution.* Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless —

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.



(Amended by order adopted April 12, 2006, effective December 1, 2006; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 7005. Service and Filing of Pleadings and Other Papers.**

Rule 5 F.R.Civ.P. applies in adversary proceedings.

### **Rule 7007. Pleadings Allowed.**

Rule 7 F.R.Civ.P. applies in adversary proceedings.

### **Rule 7007.1. Corporate Ownership Statement.**

#### *(a) Required disclosure.*

Any corporation that is a party to an adversary proceeding, other than the debtor or a governmental unit, shall file two copies of a statement that identifies any corporation, other than a governmental unit, that directly or indirectly owns 10% or more of any class of the corporation's equity interests, or states that there are no entities to report under this subdivision.

#### *(b) Time for filing.*

A party shall file the statement required under Rule 7007.1(a) with its first appearance, pleading, motion, response, or other request addressed to the court. A party shall file a supplemental statement promptly upon any change in circumstances that this rule requires the party to identify or disclose.

(Amended by order adopted April 30, 2007, effective December 1, 2007.)

### **Rule 7008. General Rules of Pleading.**

#### *(a) Applicability of Rule 8 F.R.Civ.P.*

Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.

#### *(b) Attorney's fees.*

A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate.

### **Rule 7009. Pleading Special Matters.**

Rule 9 F.R.Civ.P. applies in adversary proceedings.



**Rule 7010. Form of Pleadings.**

Rule 10 F.R.Civ.P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to the appropriate Official Form.

**Rule 7012. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings.**

(a) *When presented.* If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 21 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement.

(b) *Applicability of Rule 12(b)-(i) F.R.Civ.P.* Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall admit or deny an allegation that the proceeding is core or non-core. If the response is that the proceeding is non-core, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.

(Amended Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

**Rule 7013. Counterclaim and Cross-Claim.**

Rule 13 F.R.Civ.P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim that the party has against the debtor, the debtor's property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through

oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action.

**Rule 7014. Third-Party Practice.**

Rule 14 F.R.Civ.P. applies in adversary proceedings.

**Rule 7015. Amended and Supplemental Pleadings.**

Rule 15 F.R.Civ.P. applies in adversary proceedings.

**Rule 7016. Pre-Trial Procedure; Formulating Issues.**

Rule 16 F.R.Civ.P. applies in adversary proceedings.

**Rule 7017. Parties Plaintiff and Defendant; Capacity.**

Rule 17 F.R.Civ.P. applies in adversary proceedings, except as provided in Rule 2010(b).

**Rule 7018. Joinder of Claims and Remedies.**

Rule 18 F.R.Civ.P. applies in adversary proceedings.

**Rule 7019. Joinder of Persons Needed for Just Determination.**

Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if an entity joined as a party raises the defense that the court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such entity from the adversary proceeding and (2) if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1412, whether that part of the proceeding involving the joined party shall be transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.

**Rule 7020. Permissive Joinder of Parties.**

Rule 20 F.R.Civ.P. applies in adversary proceedings.

**Rule 7021. Misjoinder and Non-Joinder of Parties.**

Rule 21 F.R.Civ.P. applies in adversary proceedings.

**Rule 7022. Interpleader.**

Rule 22(a) F.R.Civ.P. applies in adversary proceedings. This rule supplements-and does not limit-the joinder of parties allowed by Rule 7020.

(Amended by Dec. 1, 2008.)

**COMMENT**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007. [12/1/08]

**Rule 7023. Class proceedings.**

Rule 23 F.R.Civ.P. applies in adversary proceedings.

**Rule 7023.1. Derivative Actions.**

Rule 23.1 F.R.Civ.P. applies in adversary proceedings.

(Amended Dec. 1, 2008.)

**COMMENT**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007. [12/1/08]

**Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations.**

Rule 23.2 F.R.Civ.P. applies in adversary proceedings.

**Rule 7024. Intervention.**

Rule 24 F.R.Civ.P. applies in adversary proceedings.

**Rule 7025. Substitution of Parties.**

Subject to the provisions of Rule 2012, Rule 25 F.R.Civ.P. applies in adversary proceedings.

**Rule 7026. General Provisions Governing Discovery.**

Rule 26 F.R.Civ.P. applies in adversary proceedings.

**Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal.**

Rule 27 F.R.Civ.P. applies to adversary proceedings.

**Rule 7028. Persons Before Whom Depositions May be Taken.**

Rule 28 F.R.Civ.P. applies in adversary proceedings.

**Rule 7029. Stipulations Regarding Discovery Procedure.**

Rule 29 F.R.Civ.P. applies in adversary proceedings.

**Rule 7030. Depositions Upon Oral Examination.**

Rule 30 F.R.Civ.P. applies in adversary proceedings.

**Rule 7031. Deposition Upon Written Questions.**

Rule 31 F.R.Civ.P. applies in adversary proceedings.

**Rule 7032. Use of Depositions in Adversary Proceedings.**

Rule 32 F.R.Civ.P. applies in adversary proceedings.

**Rule 7033. Interrogatories to Parties.**

Rule 33 F.R.Civ.P. applies in adversary proceedings.



**Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.**

Rule 34 F.R.Civ.P. applies in adversary proceedings.

**Rule 7035. Physical and Mental Examination of Persons.**

Rule 35 F.R.Civ.P. applies in adversary proceedings.

**Rule 7036. Requests for Admission.**

Rule 36 F.R.Civ.P. applies in adversary proceedings.

**Rule 7037. Failure to Make Discovery: Sanctions.**

Rule 37 F.R.Civ.P. applies in adversary proceedings.

**Rule 7040. Assignment of Cases for Trial.**

Rule 40 F.R.Civ.P. applies in adversary proceedings.

**Rule 7041. Dismissal of Adversary Proceedings.**

Rule 41 F.R.Civ.P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

**Rule 7042. Consolidation of Adversary Proceedings; Separate Trials.**

Rule 42 F.R.Civ.P. applies in adversary proceedings.

**Rule 7052. Findings by the Court.**

Rule 52 F. R. Civ. P. applies in adversary proceedings, except that any motion under subdivision (b) of that rule for amended or additional findings shall be filed no later than 14 days after entry of judgment. In these proceedings, the reference in Rule 52 F. R. Civ. P. to the entry of judgment under Rule 58 F. R. Civ. P. shall be read as a reference to the entry of a judgment or order under Rule 5003(a).

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

The rule is amended to clarify that the reference in Rule 52 F. R. Civ. P. to Rule 58 F. R. Civ. P. and its provisions is construed as a reference to the entry of a judgment or order under Rule 5003(a).

The rule is amended by limiting the time for filing post judgment motions for amended or additional findings. In 2009, Rule 52 F.R. Civ. P. was amended to extend the deadline for filing those post judgment motions to no later than 28 days after entry of the judgment. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing a motion for amended or additional findings would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment. [12/1/09]

**Rule 7054. Judgments; Costs.****(a) Judgments.**

Rule 54(a)-(c) F.R.Civ.P. applies in adversary proceedings.

**(b) Costs.**

The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 14 days' notice; on motion served within seven days thereafter, the action of the clerk may be reviewed by the court.

(Amended by order adopted April 23, 2012, effective December 1, 2012.)

**COMMENT**

Subdivision (b) is amended to provide more time for a party to respond to the prevailing party's bill of costs. The former rule's provision of one day's notice was unrealistically short. The change to 14 days conforms to the change made to Civil Rule 54(d). Extension from five to seven days of the time for serving a motion for court review of the clerk's action implements changes in connection with the December 1, 2009, amendment to Rule 9006(a) and the manner by which time is computed under the rules. Throughout the rules, deadlines have been amended in the following manner:

- 5-day periods became 7-day periods
- 10-day periods became 14-day periods
- 15-day periods became 14-day periods
- 20-day periods became 21-day periods
- 5-day periods became 28-day periods [12/1/12]

**Rule 7055. Default.**

Rule 55 F.R.Civ.P. applies in adversary proceedings.

**Rule 7056. Summary Judgment.**

Rule 56 F.R.Civ.P. applies in adversary proceedings, except that any motion for summary judgment must be made at least 30 days before the initial date set for an evidentiary hearing on any issue for which summary judgment is sought, unless a different time is set by local rule or the court orders otherwise.

(Amended by order adopted April 23, 2012, effective December 1, 2012.)

**COMMENT**

The only exception to complete adoption of Rule 56 F.R. Civ. P. involves the default deadline for filing a summary judgment motion. Rule 56(c)(1)(A) makes the default deadline 30 days after the close of all discovery. Because in bankruptcy cases hearings can occur shortly after the close of discovery, a default deadline based on the scheduled hearing date, rather than the close of discovery, is adopted. As with Rule 56(c)(1), the deadline can be altered either by local rule or court order. [12/1/12]

**Rule 7058. Entering Judgment in Adversary Proceeding.**

Rule 58 F. R. Civ. P. applies in adversary proceedings. In these proceedings, the reference in Rule 58 F. R. Civ. P. to the civil docket shall be read as a reference to the docket maintained by the clerk under Rule 5003(a).

(Added by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

This rule makes Rule 58 F. R. Civ. P. applicable in adversary proceedings and is added in connection with the amendments to Rule 9021. [12/1/09]

**Rule 7062. Stay of Proceedings to Enforce a Judgment.**

Rule 62 F.R.Civ.P. applies in adversary proceedings.

**Rule 7064. Seizure of Person or Property.**

Rule 64 F.R.Civ.P. applies in adversary proceedings.

**Rule 7065. Injunctions.**

Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).

**Rule 7067. Deposit in Court.**

Rule 67 F.R.Civ.P. applies in adversary proceedings.

**Rule 7068. Offer of Judgment.**

Rule 68 F.R.Civ.P. applies in adversary proceedings.

**Rule 7069. Execution.**

Rule 69 F.R.Civ.P. applies in adversary proceedings.

**Rule 7070. Judgment for Specific Acts; Vesting Title.**

Rule 70 F.R.Civ.P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is within the jurisdiction of the court.

**Rule 7071. Process in Behalf of and Against Persons Not Parties.**

Rule 71 F.R.Civ.P. applies in adversary proceedings.

**Rule 7087. Transfer of Adversary Proceeding.**

On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1412, except as provided in Rule 7019(2).

**PART VIII — APPEALS TO DISTRICT COURT OR BANKRUPTCY  
APPELLATE PANEL****Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Certification to Court of Appeals.**

(a) *Appeal as of Right; How Taken.* An appeal from a judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel as permitted by 28 U.S.C. § 158(a)(1) or (a)(2) shall be taken by filing a notice of appeal with the clerk within the time allowed by Rule 8002. An appellant's failure to take any step other than timely



filing a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall (1) conform substantially to the appropriate Official Form, (2) contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, and (3) be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk to comply promptly with Rule 8004.

(b) *Appeal by Leave; How Taken.* An appeal from an interlocutory judgment, order, or decree of a bankruptcy judge as permitted by 28 U.S.C. § 158(a)(3) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) *Voluntary Dismissal.*

(1) *Before Docketing.* If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) *After Docketing.* If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or the clerk of the bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

(d) [Abrogated]

(e) *Election to Have Appeal Heard by District Court Instead of Bankruptcy Appellate Panel; Withdrawal of Election.*

(1) *Separate Writing for Election.* An election to have an appeal heard by the district court under 28 U.S.C. § 158(c)(1) may be made only by a statement of election contained in a separate writing filed within the time prescribed by 28 U.S.C. § 158(c)(1).

(2) *Withdrawal of Election.* A request to withdraw the election may be filed only by written stipulation of all the parties to the appeal or their attorneys of record. Upon such a stipulation, the district court may either transfer the appeal to the bankruptcy appellate panel or retain the appeal in the district court.

(f) *Certification for Direct Appeal to Court of Appeals.*

(1) *Timely Appeal Required.* A certification of a judgment, order, or decree of a bankruptcy court to a court of appeals under 28 U.S.C. § 158(d)(2) shall not be effective until a timely appeal has been taken in the manner required by subdivisions (a) or (b) of this rule and the notice of appeal has become effective under Rule 8002.

(2) *Court Where Certification Made and Filed.* A certification that a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists shall be filed in the court in which a matter is pending for purposes of 28 U.S.C. § 158(d)(2) and this rule. A matter is pending in a bankruptcy court until the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3). A matter is pending in a district court or bankruptcy appellate panel after the docketing, in accordance with Rule 8007(b), of an appeal taken under 28 U.S.C. § 158(a)(1) or (2), or the grant of leave to appeal under 28 U.S.C. § 158(a)(3).

(A) *Certification by Court on Request or Court's Own Initiative.*

(i) *Before Docketing or Grant of Leave to Appeal.* Only a bankruptcy court may make a certification on request or on its own initiative while the matter is pending in the bankruptcy court.

(ii) *After Docketing or Grant of Leave to Appeal.* Only the district court or bankruptcy appellate panel involved may make a certification on request of the parties or on its own initiative while the matter is pending in the district court or bankruptcy appellate panel.

(B) *Certification by All Appellants and Appellees Acting Jointly.* A certification by all the appellants and appellees, if any, acting jointly may be made by filing the appropriate Official Form with the clerk of the court in which the matter is pending. The certification may be accompanied by a short statement of the basis for the certification, which may include the information listed in subdivision (f)(3)(C) of this rule.

(3) *Request for Certification; Filing; Service; Contents.*

(A) A request for certification shall be filed, within the time specified by 28 U.S.C. § 158(d)(2), with the clerk of the court in which the matter is pending.

(B) Notice of the filing of a request for certification shall be served in the manner required for service of a notice of appeal under Rule 8004.

(C) A request for certification shall include the following:

- (i) the facts necessary to understand the question presented;
- (ii) the question itself;
- (iii) the relief sought;
- (iv) the reasons why the appeal should be allowed and is authorized by statute or rule, including why a circumstance specified in 28 U.S.C. § 158(d)(2)(A)(i)-(iii) exists; and

(v) an attached copy of the judgment, order, or decree complained of and any related opinion or memorandum.

(D) A party may file a response to a request for certification or a cross request within 14 days after the notice of the request is served, or another time fixed by the court.

(E) Rule 9014 does not govern a request, cross request, or any response. The matter shall be submitted without oral argument unless the court otherwise directs.

(F) A certification of an appeal under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties.

(4) *Certification on Court's Own Initiative.*

(A) A certification of an appeal on the court's own initiative under 28 U.S.C. § 158(d)(2) shall be made in a separate document served on the parties in the manner required for service of a notice of appeal under Rule 8004. The certification shall be accompanied by an opinion or memorandum that contains the information required by subdivision (f)(3)(C)(i)-(iv) of this rule.

(B) A party may file a supplementary short statement of the basis for certification within 14 days after the certification.

(5) *Duties of Parties After Certification.* A petition for permission to appeal in accordance with F. R. App. P. 5 shall be filed no later than 30 days after a certification has become effective as provided in subdivision (f)(1).

(Amended Aug. 1, 1987; Aug. 1, 1991; Dec. 1, 1997; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

Subdivision (e) is amended by redesignating the subdivision as (e)(1) and adding new subdivision (e)(2). Subdivision (e)(2) explicitly recognizes the district court's authority to transfer an appeal to the bankruptcy appellate panel on two conditions: first, all of the parties to the appeal must have agreed to request the withdrawal of the election to have the district court hear the appeal; and, second, the district court must decide whether to grant the request for withdrawal. The district court has discretion either to keep the case or transfer it to the bankruptcy appellate panel, which will prevent strategic behavior by parties and avoid the wasting of judicial resources.

Subdivision (f) is added to the rule to implement the 2005 amendments to 28 U.S.C. § 158(d). That section authorizes appeals directly to the court of appeals, with that court's consent, upon certification that a ground for the appeal exists under § 158(d)(2)(A)(i)-(iii). Certification can be made by the court on its own initiative under subdivision (f)(4), or in response to a request of a party or a majority of the appellants and appellees (if any) under



subdivision (f)(3). Certification also can be made by all of the appellants and appellees under subdivision (f)(2)(B). Under subdivision (f)(1), certification is effective only when a timely appeal is commenced under subdivision (a) or (b), and a notice of appeal has been timely filed under Rule 8002. These actions will provide sufficient notice of the appeal to the circuit clerk, so the rule dispenses with the uncodified temporary procedural requirements set out in § 1233 (b)(4) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8.

The rule adopts a bright-line test for identifying the court in which a matter is pending. Under subdivision (f)(2), the bright-line chosen is the “docketing” under Rule 8007(b) of an appeal of an interlocutory order or decree under 28 U.S.C. § 158(a)(2) or a final judgment, order or decree under 28 U.S.C. § 158(a)(1), or the granting of leave to appeal any other interlocutory judgment, order or decree under 28 U.S.C. § 158(a)(3), whichever is earlier.

To ensure that parties are aware of a certification, the rule requires either that it be made on the Official Form (if being made by all of the parties to the appeal) or on a separate document (whether the certification is made on the court’s own initiative or in response to a request by a party). This is particularly important because the rule adopts the bankruptcy practice established by Rule 8001(a) and (b) of requiring a notice of appeal in every instance, including interlocutory orders, of appeals from bankruptcy court orders, judgments, and decrees. Because this requirement is satisfied by filing the notice of appeal that takes the appeal to the district court or bankruptcy appellate panel in the first instance, the rule does not require a separate notice of appeal if a certification occurs after a district court or bankruptcy appellate panel decision.

A certification under subdivision (f)(1) does not place the appeal in the circuit court. Rather, the court of appeals must first authorize the direct appeal. Subdivision (f)(5) therefore provides that any party intending to pursue the appeal in the court of appeals must seek that permission under Rule 5 of the Federal Rules of Appellate Procedure. Subdivision (f)(5) requires that the petition for permission to appeal be filed within 30 days after an effective certification. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 8002. Time for Filing Notice of Appeal.**

(a) *Fourteen-day period.* The notice of appeal shall be filed with the clerk within 14 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. A notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of the district court or the clerk of the bankruptcy appellate panel shall note thereon the date on which it was received and transmit it to the clerk and it shall be deemed filed with the clerk on the date so noted.

(b) *Effect of motion on time for appeal.* If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion:



(1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;

(2) to alter or amend the judgment under Rule 9023;

(3) for a new trial under Rule 9023; or

(4) for relief under Rule 9024 if the motion is filed no later than 14 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Rule 8001, to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file a notice, or an amended notice, of appeal within the time prescribed by this Rule 8002 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(c) *Extension of time for appeal.*

(1) The bankruptcy judge may extend the time for filing the notice of appeal by any party, unless the judgment, order, or decree appealed from:

(A) grants relief from an automatic stay under § 362, § 922, § 1201, or § 1301;

(B) authorizes the sale or lease of property or the use of cash collateral under § 363;

(C) authorizes the obtaining of credit under § 364;

(D) authorizes the assumption or assignment of an executory contract or unexpired lease under § 365;

(E) approves a disclosure statement under § 1125; or

(F) confirms a plan under § 943, § 1129, § 1225, or § 1325 of the Code.

(2) A request to extend the time for filing a notice of appeal must be made by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 21 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect. An extension of time for filing a notice of appeal may not exceed 21 days from the expiration of the time for filing a notice of appeal otherwise prescribed by this rule or 14 days from the date of entry of the order granting the motion, whichever is later.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### Rule 8003. Leave to Appeal.

(a) *Content of Motion; Answer.* A motion for leave to appeal under 28 U.S.C. § 158(a) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 14 days after service of the motion, an adverse party may file with the clerk an answer in opposition.

(b) *Transmittal; Determination of Motion.* The clerk shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) *Appeal Improperly Taken Regarded as a Motion for Leave to Appeal.* If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 14 days of entry of the order.

(d) *Requirement of Leave to Appeal.* If leave to appeal is required by 28 U.S.C. § 158(a) and has not earlier been granted, the authorization of a direct appeal by a court of appeals under 28 U.S.C. § 158(d)(2) shall be deemed to satisfy the requirement for leave to appeal.

(Amended Aug. 1, 1987; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The rule is amended to add subdivision (d) to solve the jurisdictional problem that could otherwise ensue when a district court or bankruptcy appellate panel has not granted leave to appeal under 28 U.S.C. § 158(a)(3). If the court of appeals accepts the appeal, the requirement of leave to appeal is deemed satisfied. However, if the court of appeals does not authorize a direct appeal, the question of whether to grant leave to appeal remains a matter to be resolved by the district court or the bankruptcy appellate panel. [12/1/08]

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 8004. Service of the Notice of Appeal.**

The clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party's last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing. The clerk shall forthwith transmit to the United States trustee a copy of the notice of appeal, but failure to transmit such notice shall not affect the validity of the appeal.

### **Rule 8005. Stay Pending Appeal.**

A motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy judge may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on



such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by a bankruptcy judge, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy judge. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.

### **Rule 8006. Record and Issues on Appeal.**

Within 14 days after filing the notice of appeal as provided by Rule 8001(a), entry of an order granting leave to appeal, or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 8002(b), whichever is later, the appellant shall file with the clerk and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within 14 days after the service of the appellant's statement the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within 14 days of service of the cross appellant's statement, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. Any party filing a designation of the items to be included in the record shall provide to the clerk a copy of the items designated or, if the party fails to provide the copy, the clerk shall prepare the copy at the party's expense. If the record designated by any party includes a transcript of any proceeding or a part thereof, the party shall, immediately after filing the designation, deliver to the reporter and file with the clerk a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

#### **COMMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 21-day periods
- 20-day periods become 28-day periods
- 25-day periods become 35-day periods [12/1/09]

### **Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal.**

#### **(a) Duty of reporter to prepare and file transcript.**

On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the



transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

(b) *Duty of clerk to transmit copy of record; docketing of appeal.*

When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies, the clerk shall prepare the copies at the expense of the appellant.

(c) *Record for preliminary hearing.*

If prior to the time the record is transmitted a party moves in the district court or before the bankruptcy appellate panel for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk at the request of any party to the appeal shall transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the parts of the record as any party to the appeal shall designate.

### **Rule 8008. Filing and Service.**

(a) *Filing.*

Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing is not timely unless the papers are received by the clerk within the time fixed for filing, except that briefs are deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished. Rule 5005(a)(2) applies to papers filed with the clerk of the district court or the clerk of the bankruptcy appellate panel if filing by electronic means is authorized by local rule promulgated pursuant to Rule 8018.

(b) *Service of all papers required.*

Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing, be served by the party or a person acting for the party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) *Manner of service.*

Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) *Proof of service.*

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk of the district court or the clerk of the bankruptcy appellate panel may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

### **Rule 8009. Briefs and Appendix; Filing and Service.**

(a) *Briefs.* Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file a brief within 14 days after entry of the appeal on the docket pursuant to Rule 8007.

(2) The appellee shall serve and file a brief within 14 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 14 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

(b) *Appendix to brief.* If the appeal is to a bankruptcy appellate panel, the appellant shall serve and file with the appellant's brief excerpts of the record as an appendix, which shall include the following:

- (1) The complaint and answer or other equivalent pleadings;
- (2) Any pretrial order;
- (3) The judgment, order, or decree from which the appeal is taken;
- (4) Any other orders relevant to the appeal;
- (5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;
- (6) Any motion and response on which the court rendered decision;
- (7) The notice of appeal;
- (8) The relevant entries in the bankruptcy docket; and
- (9) The transcript or portion thereof, if so required by a rule of the bankruptcy appellate panel.

An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### Rule 8010. Form of Briefs; Length.

(a) *Form of briefs.*

Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief shall be as follows:

(1) Brief of the appellant.

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases alphabetically arranged, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(B) A statement of the basis of appellate jurisdiction.

(C) A statement of the issues presented and the applicable standard of appellate review.



(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(F) A short conclusion stating the precise relief sought.

(2) Brief of the appellee.

The brief of the appellee shall conform to the requirements of paragraph (1)(A)-(E) of this subdivision, except that a statement of the basis of appellate jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(b) *Reproduction of statutes, rules, regulations, or similar material.*

If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof shall be reproduced in the brief or in an addendum or they may be supplied to the court in pamphlet form.

(c) *Length of briefs.*

Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.

### **Rule 8011. Motions.**

(a) *Content of motions; response; reply.*

A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.

(b) *Determination of motions for procedural orders.*

Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.

(c) *Determination of all motions.*

All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

(d) *Emergency motions.*

Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying



the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

*(e) Power of a single judge to entertain motions.*

A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.

**Rule 8012. Oral Argument.**

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed. Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

**Rule 8013. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact.**

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

**Rule 8014. Costs.**

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall be taxed by the clerk as costs of the appeal in favor of the party entitled to costs under this rule.

**Rule 8015. Motion for Rehearing.**

Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 14 days after entry of the judgment of the district court or the bankruptcy appellate panel. If a timely motion for rehearing is filed, the time for appeal to the court of appeals for all parties shall run from the entry of the order denying rehearing or the entry of subsequent judgment.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods

- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

### **Rule 8016. Duties of Clerk of District Court and Bankruptcy Appellate Panel.**

#### **(a) *Entry of judgment.***

The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment in the docket constitutes entry of judgment.

#### **(b) *Notice of orders or judgments; return of record.***

Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal, to the United States trustee, and to the clerk, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the clerk on disposition of the appeal.

### **Rule 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel.**

(a) *Automatic stay of judgment on appeal.* Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 14 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.

(b) *Stay pending appeal to the court of appeals.* On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.

(c) *Power of court of appeals not limited.* This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

### **COMMENT**

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]



**Rule 8018. Rules by Circuit Councils and District Courts; Procedure When There is No Controlling Law.***(a) Local Rules by Circuit Councils and District Courts.*

(1) Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 158(b) and the district courts may, acting by a majority of the judges of the council or district court, make and amend rules governing practice and procedure for appeals from orders or judgments of bankruptcy judges to the respective bankruptcy appellate panel or district court consistent with—but not duplicative of—Acts of Congress and the rules of this Part VIII. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Rule 83 F.R.Civ.P. governs the procedure for making and amending rules to govern appeals.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

*(b) Procedure When There is No Controlling Law.*

A bankruptcy appellate panel or district judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the circuit council or district court. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the circuit council or district court unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

**Rule 8019. Suspension of Rules in Part VIII.**

In the interest of expediting decision or for other cause, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002, and 8013, and may order proceedings in accordance with the direction.

**Rule 8020. Damages and Costs for Frivolous Appeal.**

If a district court or bankruptcy appellate panel determines that an appeal from an order, judgment, or decree of a bankruptcy judge is frivolous, it may, after a separately filed motion or notice from the district court or bankruptcy appellate panel and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

**PART IX — GENERAL PROVISIONS****Rule 9001. General Definitions.**

The definitions of words and phrases in §§ 101, 902, 1101, and 1502 of the Code, and the rules of construction in § 102, govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) “**Bankruptcy clerk**” means a clerk appointed pursuant to 28 U.S.C. § 156(b).

(2) “**Bankruptcy Code**” or “**Code**” means title 11 of the United States Code.

(3) “**Clerk**” means bankruptcy clerk, if one has been appointed, otherwise clerk of the district court.

(4) “**Court**” or “**judge**” means the judicial officer before whom a case or proceeding is pending.

(5) “**Debtor.**” When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person:

(A) if the debtor is a corporation, “debtor” includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control;



(B) if the debtor is a partnership, “debtor” includes any or all of its general partners or, if designated by the court, any other person in control.

(6) “**Firm**” includes a partnership or professional corporation of attorneys or accountants.

(7) “**Judgment**” means any appealable order.

(8) “**Mail**” means first class, postage prepaid.

(9) “**Notice provider**” means any entity approved by the Administrative Office of the United States Courts to give notice to creditors under Rule 2002(g)(4).

(10) “**Regular associate**” means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(11) “**Trustee**” includes a debtor in possession in a chapter 11 case.

(12) “**United States trustee**” includes an assistant United States trustee and any designee of the United States trustee.

(Amended, effective December 1, 2010.)

### COMMENT

The rule is amended to add § 1502 of the Code to the list of definitional provisions that are applicable to the Rules. That section was added to the Code by the 2005 amendments. [12/1/10]

### **Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under The Code.**

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) “**Action**” or “**civil action**” means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) “**Appeal**” means an appeal as provided by 28 U.S.C. § 158.

(3) “**Clerk**” or “**clerk of the district court**” means the court officer responsible for the bankruptcy records in the district.

(4) “**District court**,” “**trial court**,” “**court**,” “**district judge**,” or “**judge**” means bankruptcy judge if the case or proceeding is pending before a bankruptcy judge.

(5) “**Judgment**” includes any order appealable to an appellate court.

### **Rule 9003. Prohibition of Ex Parte Contacts.**

(a) *General prohibition.*

Except as otherwise permitted by applicable law, any examiner, any party in interest, and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding.

(b) *United States trustee.*

Except as otherwise permitted by applicable law, the United States trustee and assistants to and employees or agents of the United States trustee shall refrain from ex parte meetings and communications with the court concerning matters affecting a particular case or proceeding. This rule does not preclude communications with the court to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

### **Rule 9004. General Requirements of Form.**

(a) *Legibility; abbreviations.*

All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) *Caption.*

Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

**Rule 9005. Harmless Error.**

Rule 61 F.R.Civ.P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

**Rule 9005.1. Constitutional Challenge to a Statute — Notice, Certification, and Intervention.**

Rule 5.1 F.R.Civ.P. applies in cases under the Code.

(Adopted by order effective December 1, 2007.)

**Rule 9006. Computing and Extending Time.**

(a) *Computing Time.* The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, then continue the period until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 9006(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 9006(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or order in the case, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:



(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where the district court is located. (In this rule, "state" includes the District of Columbia and any United States commonwealth or territory.)

(b) *Enlargement.*

(1) *In General.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.

(3) *Enlargement Governed By Other Rules.* The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules. In addition, the court may enlarge the time to file the statement required under Rule 1007(b)(7), and to file schedules and statements in a small business case under § 1116(3) of the Code, only to the extent and under the conditions stated in Rule 1007(c).

(c) *Reduction.*

(1) *In General.* Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) *Reduction Not Permitted.* The court may not reduce the time for taking action under Rules 2002(a)(7), 2003(a), 3002(c), 3014, 3015, 4001(b)(2), (c)(2), 4003(a), 4004(a), 4007(c), 4008(a), 8002, and 9033(b). In addition, the court may not reduce the time under Rule 1007(c) to file the statement required by Rule 1007(b)(7).

(d) *For Motions — Affidavits.* A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than seven days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

(e) *Time of Service.* Service of process and service of any paper other than process or of notice by mail is complete on mailing.

(f) *Additional Time After Service by Mail or Under Rule 5(b)(2)(D), (E), or (F) F. R. Civ. P.* When there is a right or requirement to act or undertake some proceedings within a prescribed period after service and that service is by mail or under Rule 5(b)(2)(D), (E), or (F) F.R.Civ.P., three days are added after the prescribed period would otherwise expire under Rule 9006(a).

(g) *Grain Storage Facility Cases.* This rule shall not limit the court's authority under § 557 of the Code to enter orders governing procedures in cases in which the debtor is an owner or operator of a grain storage facility.

(Amended Aug. 1, 1987; Aug. 1, 1989; Aug. 1, 1991; Dec. 1, 1996; Dec. 1, 1999; Dec. 1, 2001; October 17, 2005; Dec. 1, 2008; amended by order adopted March 26, 2009, effective December 1, 2009.)



## COMMENT

Subdivision (b)(3) is amended to implement § 1116(3) of the Code, as amended by the 2005 amendments, which places specific limits on the extension of time for filing schedules and statements of financial affairs in a small business case.

Subdivisions (b)(3) and (c)(2) are amended to provide that enlargement or reduction of the time to file the statement of completion of a personal financial management course required by Rule 1007(b)(7) are governed by Rule 1007(c). Likewise, the amendments to subdivisions (b)(3) and (c)(2) recognize that the enlargement of time to file a reaffirmation agreement is governed by Rule 4008(a), and that reduction of the time provided under that rule is not permitted.

Other amendments are stylistic. [12/1/08]

**Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in a Federal Rule of Bankruptcy Procedure, a Federal Rule of Civil Procedure, a statute, a local rule, or a court order. In accordance with Bankruptcy Rule 9029(a), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).

The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) “does not apply to situations where the court has established a specific calendar day as a deadline”), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is “no later than November 1, 2007,” subdivision (a) does not govern. But if a filing is required to be made “within 10 days” or “within 72 hours,” subdivision (a) describes how that deadline is computed.

Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. See, e.g., 11 U.S.C. § 527(a)(2) (debt relief agencies must provide a written notice to an assisted person “not later than 3 business days” after providing bankruptcy assistance services).

**Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. See, e.g., Federal Rule of Civil Procedure 60(c)(1) made applicable to bankruptcy cases under Rule 9024. Subdivision (a)(1)(B)’s directive to “count every day” is relevant only if the period is stated in days (not weeks, months, or years).

Under former Rule 9006(a), a period of eight days or more was computed differently than a period of less than eight days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 9006(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results.

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days — including intermediate Saturdays, Sundays, and legal holidays — are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk’s office is inaccessible.

Where subdivision (a) formerly referred to the “act, event, or default” that triggers the deadline, new subdivision (a) refers simply to the “event” that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than eight days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the

change. *See, e.g.*, Rules 2008 (trustee's duty to notify court of acceptance of the appointment within five days is extended to seven days); 6004(b) (time for filing and service of objection to proposed use, sale or lease of property extended from five days prior to the hearing to seven days prior to the hearing); and 9006(d) (time for giving notice of a hearing extended from five days prior to the hearing to seven days).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. *See, e.g.*, Rules 1007(h) (10-day period to file supplemental schedule for property debtor becomes entitled to acquire after the commencement of the case is extended to 14 days); 3020(e) (10-day stay of order confirming a chapter 11 plan extended to 14 days); 8002(a) (10-day period in which to file notice of appeal extended to 14 days). A 14-day period also has the advantage that the final day falls on the same day of the week as the event that triggered the period — the 14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting seven-day periods to replace some of the periods set at less than 10 days, 21-day periods to replace 20-day periods, and 28-day periods to replace 25-day periods. Thirty-day and longer periods, however, were generally retained without change.

**Subdivision (a)(2).** New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Bankruptcy Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be “rounded up” to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

**Subdivision (a)(3).** When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday, or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply “[u]nless the court orders otherwise.” In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to “weather or other conditions” as the reason for the inaccessibility of the clerk's office. The reference to “weather” was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through caselaw. *See, e.g., William G. Phelps, When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing. *See, e.g., D. Kan. Rule 5.4.11* (“A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.”).

**Subdivision (a)(4).** New subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a



statute, local rule, or order in the case. A local rule may provide, for example, that papers filed in a drop box after the normal hours of the clerk's office are filed as of the day that is date-stamped on the papers by a device in the drop box.

28 U.S.C. § 452 provides that “[a]ll courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.” A corresponding provision exists in Rule 5001(a). Some courts have held that these provisions permit an after-hours filing by handing the papers to an appropriate official. *See, e.g., Casaldue v. Diaz*, 117 F.2d 915, 917 (1st Cir. 1941). Subdivision (a)(4) does not address the effect of the statute on the question of after-hours filing; instead, the rule is designed to deal with filings in the ordinary course without regard to Section 452.

**Subdivision (a)(5).** New subdivision (a)(5) defines the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Bankruptcy Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rules 1007(c) (the schedules, statements, and other documents shall be filed by the debtor within 14 days of the entry of the order for relief”); 1019(5)(B)(ii) (“the trustee, not later than 30 days after conversion of the case, shall file and transmit to the United States trustee a final report and account”); and 7012(a) (“If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.”).

A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rules 6004(b) (“an objection to a proposed use, sale, or lease of property shall be filed and served not less than seven days before the date set for the proposed action”); 9006(d) (“A written motion, other than one which may be heard *ex parte*, and notice of any hearing shall be served not later than seven days before the time specified for such hearing”). In determining what is the “next” day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction — that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31.

**Subdivision (a)(6).** New subdivision (a)(6) defines “legal holiday” for purposes of the Federal Rules of Bankruptcy Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of “legal holiday” days that are declared a holiday by the President or Congress.

For forward-counted periods — *i.e.*, periods that are measured after an event — subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays, and defines the term “state” — for purposes of subdivision (a)(6) — to include the District of Columbia and any commonwealth or territory of the United States. Thus, for purposes of subdivision (a)(6)’s definition of “legal holiday,” “state” includes the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot’s Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21 ; the fact that April 21 is a state



holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk's office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday — no earlier than Tuesday, April 22.

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods

Subdivision (f) is amended to conform to the changes made to Rule 5(b)(2) of the Federal Rules of Civil Procedure as a part of the Civil Rules Restyling Project. As a part of that project, subparagraphs (b)(2)(C) and (D) of that rule were rewritten as subparagraphs (b)(2)(D), (E), and (F). The cross reference to those rules contained in subdivision (f) of this rule is corrected by this amendment. [12/1/09]

### **Rule 9007. General Authority to Regulate Notices.**

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

### **Rule 9008. Service or Notice by Publication.**

Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.

### **Rule 9009. Forms.**

Except as otherwise provided in Rule 3016(d), the Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code. The forms shall be construed to be consistent with these rules and the Code.

(Amended Aug. 1, 1991; October 17, 2005; Dec. 1, 2008.)

### **COMMENT**

The rule is amended to provide that a plan proponent in a small business chapter 11 case need not use an Official Form of a plan of reorganization and disclosure statement. The use of those forms is optional, and under Rule 3016(d) the proponent may submit a plan and disclosure statement in those cases that does not conform to the Official Forms. [12/1/08]

### **Rule 9010. Representation and Appearances; Powers of Attorney.**

(a) *Authority to act personally or by attorney.*

A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an

attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

*(b) Notice of appearance.*

An attorney appearing for a party in a case under the Code shall file a notice of appearance with the attorney's name, office address and telephone number, unless the attorney's appearance is otherwise noted in the record.

*(c) Power of attorney.*

The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to the appropriate Official Form. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, 953, Rule 9012, or a person authorized to administer oaths under the laws of the state where the oath is administered.

**Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers.**

*(a) Signature.*

Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

*(b) Representations to the court.*

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

*(c) Sanctions.*

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b). If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a



law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On court's initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of sanction; limitations.

A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) *Inapplicability to discovery.*

Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 7026 through 7037.

(e) *Verification.*

Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.

(f) *Copies of signed or verified papers.*

When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

### **Rule 9012. Oaths and Affirmations.**

(a) *Persons authorized to administer oaths.*

The following persons may administer oaths and affirmations and take acknowledgments: a bankruptcy judge, clerk, deputy clerk, United States trustee, officer authorized to administer oaths in proceedings before the courts of the United States or under the laws of the state where the oath is to be taken, or a diplomatic or consular officer of the United States in any foreign country.

(b) *Affirmation in lieu of oath.*

When in a case under the Code an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

### **Rule 9013. Motions: Form and Service.**

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered *ex parte* shall be served by the moving party on the trustee or debtor in possession and on those entities specified by these rules or, if service is not required or the entities to be served are not specified by these rules, the moving party shall serve the entities the court directs.

### **Rule 9014. Contested Matters.**

(a) *Motion.*



In a contested matter not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court directs otherwise.

(b) *Service.*

The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004. Any paper served after the motion shall be served in the manner provided by Rule 5(b) F.R.Civ.P.

(c) *Application of Part VII Rules.*

Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7064, 7069, and 7071. The following subdivisions of Fed. R. Civ. P. 26, as incorporated by Rule 7026, shall not apply in a contested matter unless the court directs otherwise: 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan). An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. The court shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.

(d) *Testimony of Witnesses.*

Testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding.

(e) *Attendance of Witnesses.*

The court shall provide procedures that enable parties to ascertain at a reasonable time before any scheduled hearing whether the hearing will be an evidentiary hearing at which witnesses may testify.

### **Rule 9015. Jury Trials.**

(a) *Applicability of certain Federal Rules of Civil Procedure.* Rules 38, 39, 47-49, and 51, F. R. Civ. P., and Rule 81(c) F. R. Civ. P. insofar as it applies to jury trials, apply in cases and proceedings, except that a demand made under Rule 38(b) F. R. Civ. P. shall be filed in accordance with Rule 5005.

(b) *Consent to have trial conducted by bankruptcy judge.* If the right to a jury trial applies, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

(c) *Applicability of Rule 50 F. R. Civ. P.* Rule 50 F. R. Civ. P. applies in cases and proceedings, except that any renewed motion for judgment or request for a new trial shall be filed no later than 14 days after the entry of judgment.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

### **COMMENT**

The rule is amended by deleting Rule 50 F.R. Civ. P. from the list in subdivision (a) of rules made applicable in cases and proceedings. However, subdivision (c) is added to make Rule 50 applicable in cases and proceedings, but it limits the time for filing certain post judgment motions to 14 days after the entry of judgment. The amendment is necessary because Rule 50 F.R. Civ. P. was amended in 2009 to extend the deadline for the filing of these post judgment motions to 28 days. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F.R. App. P. In a bankruptcy case, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day

deadline for filing these post judgment motions would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment.

Other amendments are stylistic. [12/1/09]

### **Rule 9016. Subpoena.**

Rule 45 F.R.Civ.P. applies in cases under the Code.

### **Rule 9017. Evidence.**

The Federal Rules of Evidence and Rules 43, 44 and 44.1 F.R.Civ.P. apply in cases under the Code.

### **Rule 9018. Secret Confidential, Scandalous, or Defamatory Matter.**

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

### **Rule 9019. Compromise and Arbitration.**

#### **(a) *Compromise.***

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

#### **(b) *Authority to compromise or settle controversies within classes.***

After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

#### **(c) *Arbitration.***

On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

### **Rule 9020. Contempt Proceedings.**

Rule 9014 governs a motion for an order of contempt made by the United State trustee or a party in interest.

### **Rule 9021. Entry of Judgment.**

A judgment or order is effective when entered under Rule 5003.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

### **COMMENT**

The rule is amended in connection with the amendment that adds Rule 7058. The entry of judgment in adversary proceedings is governed by Rule 7058, and the entry of a judgment or order in all other proceedings is governed by this rule. [12/1/09]

**Rule 9022. Notice of Judgment or Order.***(a) Judgment or order of bankruptcy judge.*

Immediately on the entry of a judgment or order the clerk shall serve a notice of entry in the manner provided in Rule 5(b) F.R.Civ.P. on the contesting parties and on other entities as the court directs. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of the judgment or order. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

*(b) Judgment or order of district judge.*

Notice of a judgment or order entered by a district judge is governed by Rule 77(d) F.R.Civ.P. Unless the case is a chapter 9 municipality case, the clerk shall forthwith transmit to the United States trustee a copy of a judgment or order entered by a district judge.

**Rule 9023. New Trials; Amendment of Judgments.**

Except as provided in this rule and Rule 3008, Rule 59 F. R. Civ. P. applies in cases under the Code. A motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a new trial, no later than 14 days after entry of judgment.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

**COMMENT**

The rule is amended to limit to 14 days the time for a party to file a post judgment motion for a new trial and for the court to order sua sponte a new trial. In 2009, Rule 59 F. R. Civ. P. was amended to extend the deadline for these actions to 28 days after the entry of judgment. That deadline corresponds to the 30-day deadline for filing a notice of appeal in a civil case under Rule 4(a)(1)(A) F. R. App. P. In a bankruptcy case, however, the deadline for filing a notice of appeal is 14 days. Therefore, the 28-day deadline for filing a motion for a new trial or a motion to alter or amend a judgment would effectively override the notice of appeal deadline under Rule 8002(a) but for this amendment. [12/1/09]

**Rule 9024. Relief from Judgment or Order.**

Rule 60 F.R.Civ.P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(c), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144, § 1230, or § 1330.

(Amended Dec. 1, 2008.)

**COMMENT**

The rule is amended to conform to the changes made to the Federal Rules of Civil Procedure through the restyling of those rules effective on December 1, 2007. [12/1/08]

**Rule 9025. Security: Proceedings Against Sureties.**

Whenever the Code or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.



**Rule 9026. Exceptions Unnecessary.**

Rule 46 F.R.Civ.P. applies in cases under the Code.

**Rule 9027. Removal.**

(a) *Notice of removal.*

(1) *Where filed; form and content.* A notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending. The notice shall be signed pursuant to Rule 9011 and contain a short and plain statement of the facts which entitle the party filing the notice to remove, contain a statement that upon removal of the claim or cause of action the proceeding is core or non-core and, if non-core, that the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy judge, and be accompanied by a copy of all process and pleadings.

(2) *Time for filing; civil action initiated before commencement of the case under the Code.* If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) *Time for filing; civil action initiated after commencement of the case under the Code.* If a claim or cause of action is asserted in another court after the commencement of a case under the Code, a notice of removal may be filed with the clerk only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed, or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) *Notice.* Promptly after filing the notice of removal, the party filing the notice shall serve a copy of it on all parties to the removed claim or cause of action.

(c) *Filing in non-bankruptcy court.* Promptly after filing the notice of removal, the party filing the notice shall file a copy of it with the clerk of the court from which the claim or cause of action is removed. Removal of the claim or cause of action is effected on such filing of a copy of the notice of removal. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(d) *Remand.* A motion for remand of the removed claim or cause of action shall be governed by Rule 9014 and served on the parties to the removed claim or cause of action.

(e) *Procedure after removal.*

(1) After removal of a claim or cause of action to a district court the district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The district court or, if the case under the Code has been referred to a bankruptcy judge of the district, the bankruptcy judge, may require the party filing the notice of removal to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 14 days after the filing of the notice of removal. Any party who files a statement pursuant to this paragraph shall mail a copy to every other party to the removed claim or cause of action.

(f) *Process after removal.* If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued pursuant to Part VII of these rules. This subdivision shall not deprive any defendant on whom process is served after removal of the defendant's right to move to remand the case.

(g) *Applicability of Part VII.* The rules of Part VII apply to a claim or cause of action removed to a district court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, the defendant shall answer or present the other defenses or objections available under the rules of Part VII within 21 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 21 days following the service of summons on such initial pleading, or within seven days following the filing of the notice of removal, whichever period is longest.

(h) *Record supplied.* When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in the removed civil action or proceeding, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the court, and all process awarded, as if certified copies had been filed.

(i) *Attachment or sequestration; securities.* When a claim or cause of action is removed to a district court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decree in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the court.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

#### Rule 9028. Disability of a Judge.

Rule 63 F.R.Civ.P. applies in cases under the Code.

#### Rule 9029. Local Bankruptcy Rules; Procedure When There is No Controlling Law.

##### (a) *Local Bankruptcy Rules.*

(1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official



Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure which are consistent with—but not duplicative of—Acts of Congress and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) *Procedure When There is No Controlling Law.*

A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

### **Rule 9030. Jurisdiction and Venue Unaffected.**

These rules shall not be construed to extend or limit the jurisdiction of the courts or the venue of any matters therein.

### **Rule 9031. Masters Not Authorized.**

Rule 53 F.R.Civ.P. does not apply in cases under the Code.

### **Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure.**

The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment or by these rules.

### **Rule 9033. Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings.**

(a) *Service.* In non-core proceedings heard pursuant to 28 U.S.C. § 157(c)(1), the bankruptcy judge shall file proposed findings of fact and conclusions of law. The clerk shall serve forthwith copies on all parties by mail and note the date of mailing on the docket.

(b) *Objections: time for filing.* Within 14 days after being served with a copy of the proposed findings of fact and conclusions of law a party may serve and file with the clerk written objections which identify the specific proposed findings or conclusions objected to and state the grounds for such objection. A party may respond to another party's objections within 14 days after being served with a copy thereof. A party objecting to the bankruptcy judge's proposed findings or conclusions shall arrange promptly for the transcription of the record, or such portions of it as all parties may agree upon or the bankruptcy judge deems sufficient, unless the district judge otherwise directs.

(c) *Extension of time.* The bankruptcy judge may for cause extend the time for filing objections by any party for a period not to exceed 21 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing objections must be made before the time for filing objections has expired, except that a request made no more than 21 days after the expiration of the time for filing objections may be granted upon a showing of excusable neglect.

(d) *Standard of review.* The district judge shall make a de novo review upon the record or, after additional evidence, of any portion of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made in accordance with



this rule. The district judge may accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the matter to the bankruptcy judge with instructions.

(Amended by order adopted March 26, 2009, effective December 1, 2009.)

#### COMMENT

The rule is amended to implement changes in connection with the amendment to Rule 9006(a) and the manner by which time is computed under the rules. The deadline in the rule is amended to substitute a deadline that is a multiple of seven days. Throughout the rules, deadlines are amended in the following manner:

- 5-day periods become 7-day periods
- 10-day periods become 14-day periods
- 15-day periods become 14-day periods
- 20-day periods become 21-day periods
- 25-day periods become 28-day periods [12/1/09]

#### **Rule 9034. Transmittal of Pleadings, Motion Papers, Objections, and Other Papers to the United States Trustee.**

Unless the United States trustee requests otherwise or the case is a chapter 9 municipality case, any entity that files a pleading, motion, objection, or similar paper relating to any of the following matters shall transmit a copy thereof to the United States trustee within the time required by these rules for service of the paper:

- (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business;
- (b) the approval of a compromise or settlement of a controversy;
- (c) the dismissal or conversion of a case to another chapter;
- (d) the employment of professional persons;
- (e) an application for compensation or reimbursement of expenses;
- (f) a motion for, or approval of an agreement relating to, the use of cash collateral or authority to obtain credit;
- (g) the appointment of a trustee or examiner in a chapter 11 reorganization case;
- (h) the approval of a disclosure statement;
- (i) the confirmation of a plan;
- (j) an objection to, or waiver or revocation of, the debtor's discharge;
- (k) any other matter in which the United States trustee requests copies of filed papers or the court orders copies transmitted to the United States trustee.

#### **Rule 9035. Applicability of Rules in Judicial Districts in Alabama and North Carolina.**

In any case under the Code that is filed in or transferred to a district in the State of Alabama or the State of North Carolina and in which a United States trustee is not authorized to act, these rules apply to the extent that they are not inconsistent with any federal statute effective in the case.

#### **Rule 9036. Notice by Electronic Transmission.**

Whenever the clerk or some other person as directed by the court is required to send notice by mail and the entity entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission. Notice by electronic means is complete on transmission.

**Rule 9037. Privacy Protection for Filings Made with the Court.**

(a) *Redacted filings.* Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) *Exemptions from the redaction requirement.* The redaction requirement does not apply to the following:

(1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(2) the record of an administrative or agency proceeding unless filed with a proof of claim;

(3) the official record of a state-court proceeding;

(4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;

(5) a filing covered by subdivision (c) of this rule; and

(6) a filing that is subject to § 110 of the Code.

(c) *Filings made under seal.* The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.

(d) *Protective orders.* For cause, the court may by order in a case under the Code:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) *Option for additional unredacted filing under seal.* An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) *Option for filing a reference list.* A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) *Waiver of protection of identifiers.* An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.

(Adopted by order effective December 1, 2007.)

**PART X — UNITED STATES TRUSTEES [ABROGATED]**

FORMS

FORM B1. Voluntary Petition.

B1 (Official Form 1) (12/11)

UNITED STATES BANKRUPTCY COURT

VOLUNTARY PETITION

Name of Debtor (if individual, enter Last, First, Middle):		Name of Joint Debtor (Spouse) (Last, First, Middle):	
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):	
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):	
Street Address of Debtor (No. and Street, City, and State):		Street Address of Joint Debtor (No. and Street, City, and State):	
ZIP CODE		ZIP CODE	
County of Residence or of the Principal Place of Business:		County of Residence or of the Principal Place of Business:	
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):	
ZIP CODE		ZIP CODE	
Location of Principal Assets of Business Debtor (if different from street address above):		ZIP CODE	
Type of Debtor (Form of Organization) (Check one box.)  <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box.)  <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.)  <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13  <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding	
Chapter 15 Debtors Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:	Tax-Exempt Entity (Check box, if applicable.)  <input type="checkbox"/> Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).	Nature of Debts (Check one box.)  <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input type="checkbox"/> Debts are primarily business debts.	
Filing Fee (Check one box.)  <input type="checkbox"/> Full Filing Fee attached  <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.  <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		Chapter 11 Debtors (Check one box.)  <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).  Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$234,300 (amount subject to adjustment on 4/01/13 and every three years thereafter). ----- Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 112(b).	
Statistical/Administrative Information  <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY	
Estimated Number of Creditors  <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000- 5,000 <input type="checkbox"/> 5,001- 10,000 <input type="checkbox"/> 10,001- 25,000 <input type="checkbox"/> 25,001- 50,000 <input type="checkbox"/> 50,001- 100,000 <input type="checkbox"/> Over 100,000			
Estimated Assets  <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500,000,001 to \$1 billion <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion			
Estimated Liabilities  <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500,000,001 to \$1 billion <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion			



B1 (Official Form 1) (12/11)		Page 2	
Voluntary Petition (This page must be completed and filed in every case.)		Name of Debtor(s):	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:		Case Number:	Date Filed:
Location Where Filed:		Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:		Case Number:	Date Filed:
District:		Relationship:	Judge:
<b>Exhibit A</b> (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)  <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		<b>Exhibit B</b> (To be completed if debtor is an individual whose debts are primarily consumer debts.)  I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).  X _____ Signature of Attorney for Debtor(s) (Date)	
<b>Exhibit C</b> Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?  <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.  <input type="checkbox"/> No.			
<b>Exhibit D</b> (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)  <input type="checkbox"/> Exhibit D, completed and signed by the debtor, is attached and made a part of this petition.  If this is a joint petition:  <input type="checkbox"/> Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box.)  <input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.  <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.  <input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes.)  <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)  _____ (Name of landlord that obtained judgment)  _____ (Address of landlord)  <input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and  <input type="checkbox"/> Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.  <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).			

B1 (Official Form 1) (12/11)		Page 3
Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s):
Signatures		
Signature(s) of Debtor(s) (Individual/Joint)		Signature of a Foreign Representative
<p>I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p>[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.</p> <p>[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Debtor</p> <p>X _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (if not represented by attorney)</p> <p>_____ Date</p>		<p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.</p> <p><input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed Name of Foreign Representative)</p> <p>_____ Date</p>
Signature of Attorney*		Signature of Non-Attorney Bankruptcy Petition Preparer
<p>X _____ Signature of Attorney for Debtor(s)</p> <p>_____ Printed Name of Attorney for Debtor(s)</p> <p>_____ Firm Name</p> <p>_____ Address</p> <p>_____ Telephone Number</p> <p>_____ Date</p> <p><small>*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.</small></p>		<p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>X _____ Signature</p> <p>_____ Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.</p> <p>Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><small>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</small></p>
Signature of Debtor (Corporation/Partnership)		
<p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Authorized Individual</p> <p>_____ Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>_____ Date</p>		

FORM B1A. Exhibit “A” to Voluntary Petition.

B 1A (Official Form 1, Exhibit A) (9/97)  
*[If debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, this Exhibit “A” shall be completed and attached to the petition.]*

UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_, ) Case No. \_\_\_\_\_  
Debtor )  
)  
) Chapter 11

EXHIBIT “A” TO VOLUNTARY PETITION

1. If any of the debtor’s securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is \_\_\_\_\_.

2. The following financial data is the latest available information and refers to the debtor’s condition on \_\_\_\_\_.

a. Total assets \$ \_\_\_\_\_

b. Total debts (including debts listed in 2.c., below) \$ \_\_\_\_\_

c. Debt securities held by more than 500 holders: Approximate  
number of  
holders:

secured <input type="checkbox"/>	unsecured <input type="checkbox"/>	subordinated <input type="checkbox"/>	\$ _____	_____
secured <input type="checkbox"/>	unsecured <input type="checkbox"/>	subordinated <input type="checkbox"/>	\$ _____	_____
secured <input type="checkbox"/>	unsecured <input type="checkbox"/>	subordinated <input type="checkbox"/>	\$ _____	_____
secured <input type="checkbox"/>	unsecured <input type="checkbox"/>	subordinated <input type="checkbox"/>	\$ _____	_____
secured <input type="checkbox"/>	unsecured <input type="checkbox"/>	subordinated <input type="checkbox"/>	\$ _____	_____

d. Number of shares of preferred stock \_\_\_\_\_

e. Number of shares common stock \_\_\_\_\_

Comments, if any: \_\_\_\_\_

3. Brief description of debtor’s business:

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:



FORM B1C. Exhibit “C” to Voluntary Petition.

B 1C (Official Form 1, Exhibit C) (9/01)

*[If, to the best of the debtor’s knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit “C” to the petition.]*

UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_,

Debtor

)

)

)

)

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

EXHIBIT “C” TO VOLUNTARY PETITION

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor’s knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):
2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

**FORM B1D. Exhibit “D” — Individual Debtor’s Statement of Compliance with Credit Counseling Requirement.**

B 1D (Official Form 1, Exhibit D) (12/09)

UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

**EXHIBIT D - INDIVIDUAL DEBTOR’S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT**

**Warning:** You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors’ collection activities.

*Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.*

☐ 1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

☐ 2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.*

B 1D (Official Form 1, Exh. D) (12/09) – Cont.

Page 2

☐ 3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. *[Summarize exigent circumstances here.]*

If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.

☐ 4. I am not required to receive a credit counseling briefing because of: *[Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]*

☐ Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);

☐ Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);

☐ Active military duty in a military combat zone.

☐ 5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Debtor: \_\_\_\_\_

Date: \_\_\_\_\_



**FORM B2. Declaration Under Penalty of Perjury on Behalf of a Corporation or Partnership.**

Official Form 2  
6/90

**DECLARATION UNDER PENALTY OF PERJURY  
ON BEHALF OF A CORPORATION OR PARTNERSHIP**

I, [the president *or* other officer *or* an authorized agent of the corporation] [*or* a member *or* an authorized agent of the partnership] named as the debtor in this case, declare under penalty of perjury that I have read the foregoing [list *or* schedule *or* amendment *or* other document (describe)] and that it is true and correct to the best of my information and belief.

Date \_\_\_\_\_

Signature \_\_\_\_\_

\_\_\_\_\_  
(Print Name and Title)

**FORM B3A. Application and Order to Pay Filing Fee in Installments..**

Official Form 3A (12/08)

**United States Bankruptcy Court**

District Of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**APPLICATION TO PAY FILING FEE IN INSTALLMENTS**

1. In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the filing fee amounting to \$ \_\_\_\_\_ in installments.
2. I am unable to pay the filing fee except in installments.
3. Until the filing fee is paid in full, I will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.
4. I propose the following terms for the payment of the Filing Fee.\*

\$ \_\_\_\_\_ Check one ☐ With the filing of the petition, or  
☐ On or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

- \* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2).
5. I understand that if I fail to pay any installment when due, my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Signature of Debtor \_\_\_\_\_ / Date \_\_\_\_\_  
(In a joint case, both spouses must sign.)

Name of Attorney \_\_\_\_\_

Signature of Joint Debtor (if any) \_\_\_\_\_ Date \_\_\_\_\_

**DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section; and (4) I will not accept any additional money or other property from the debtor before the filing fee is paid in full.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer \_\_\_\_\_

Social Security No. (Required by 11 U.S.C. § 110.) \_\_\_\_\_

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.

Address \_\_\_\_\_

x \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

Date \_\_\_\_\_

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

Official Form 3A (12/08) - Cont.

## United States Bankruptcy Court

District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

## ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS

☐ IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

☐ IT IS ORDERED that the debtor(s) shall pay the filing fee according to the following terms:

\$ \_\_\_\_\_ Check one ☐ With the filing of the petition, or  
☐ On or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

☐ IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor(s) shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

BY THE COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*United States Bankruptcy Judge*



**FORM B3B. Application for Waiver of Chapter 7 Filing Fee.**

B3B (Official Form 3B) (11/11)

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE  
IN FULL OR IN INSTALLMENTS**

The court fee for filing a case under chapter 7 of the Bankruptcy Code is \$306.

If you cannot afford to pay the full fee at the time of filing, you may apply to pay the fee in installments. A form, which is available from the bankruptcy clerk's office, must be completed to make that application. If your application to pay in installments is approved, you will be permitted to file your petition, generally completing payment of the fee over the course of four to six months.

If you cannot afford to pay the fee either in full at the time of filing or in installments, you may request a waiver of the filing fee by completing this application and filing it with the Clerk of Court. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee only if your income is less than 150 percent of the official poverty line applicable to your family size and you are unable to pay the fee in installments. You may obtain information about the poverty guidelines at [www.uscourts.gov](http://www.uscourts.gov) or in the bankruptcy clerk's office.

**Required information.** Complete all items in the application, and attach requested schedules. Then sign the application on the last page. If you and your spouse are filing a joint bankruptcy petition, you both must provide information as requested and sign the application.

B3B (Official Form 3B) (11/11) -- Cont.

UNITED STATES BANKRUPTCY COURT

In re: \_\_\_\_\_  
Debtor(s)

Case No. \_\_\_\_\_  
(if known)

APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE IN FULL OR IN INSTALLMENTS

Part A. Family Size and Income

- 1. Including yourself, your spouse, and dependents you have listed or will list on Schedule I (Current Income of Individual Debtors(s)), how many people are in your family? (Do not include your spouse if you are separated AND are not filing a joint petition.) \_\_\_\_\_
- 2. Restate the following information that you provided, or will provide, on Line 16 of Schedule I. Attach a completed copy of Schedule I, if it is available.

Total Combined Monthly Income (Line 16 of Schedule I): \$ \_\_\_\_\_

- 3. State the monthly net income, if any, of dependents included in Question 1 above. Do not include any income already reported in Item 2. If none, enter \$0.

\$ \_\_\_\_\_

- 4. Add the "Total Combined Monthly Income" reported in Question 2 to your dependents' monthly net income from Question 3.

\$ \_\_\_\_\_

- 5. Do you expect the amount in Question 4 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_\_ No \_\_\_\_

If yes, explain.

Part B. Monthly Expenses

- 6. EITHER (a) attach a completed copy of Schedule J (Schedule of Monthly Expenses), and state your total monthly expenses reported on Line 18 of that Schedule, OR (b) if you have not yet completed Schedule J, provide an estimate of your total monthly expenses.

\$ \_\_\_\_\_

- 7. Do you expect the amount in Question 6 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_\_ No \_\_\_\_  
If yes, explain.

Part C. Real and Personal Property

EITHER (1) attach completed copies of Schedule A (Real Property) and Schedule B (Personal Property), OR (2) if you have not yet completed those schedules, answer the following questions.

- 8. State the amount of cash you have on hand. \$ \_\_\_\_\_
- 9. State below any money you have in savings, checking, or other accounts in a bank or other financial institution.

Bank or Other Financial Institution:	Type of Account such as savings, checking, CD:	Amount:
_____	_____	\$ _____
_____	_____	\$ _____

B3B (Official Form 3B) (11/11) -- Cont.

10. State below the assets owned by you. **Do not list ordinary household furnishings and clothing.**

Home	Address: _____ _____	Value: \$ _____ Amount owed on mortgages and liens: \$ _____
Other real estate	Address: _____ _____	Value: \$ _____ Amount owed on mortgages and liens: \$ _____
Motor vehicle	Model/Year: _____ _____	Value: \$ _____ Amount owed: \$ _____
Motor vehicle	Model/Year: _____ _____	Value: \$ _____ Amount owed: \$ _____
Other	Description _____ _____	Value: \$ _____ Amount owed: \$ _____

## 11. State below any person, business, organization, or governmental unit that owes you money and the amount that is owed.

Name of Person, Business, or Organization that Owes You Money	Amount Owed
_____	\$ _____
_____	\$ _____

**Part D. Additional Information.**

12. Have you paid an **attorney** any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you paid? \$ \_\_\_\_\_
13. Have you promised to pay or do you anticipate paying an **attorney** in connection with your bankruptcy case? Yes \_\_\_ No \_\_\_  
If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_
14. Have you paid **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you paid? \$ \_\_\_\_\_
15. Have you promised to pay or do you anticipate paying **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_  
If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_
16. Has anyone paid an attorney or other person or service in connection with this case, on your behalf? Yes \_\_\_ No \_\_\_  
If yes, explain.



B3B (Official Form 3B) (11/11) -- Cont.

17. Have you previously filed for bankruptcy relief during the past eight years? Yes ☐ No ☐

Case Number (if known)	Year filed	Location of filing	Did you obtain a discharge? (if known)		
			Yes	No	Don't know
			Yes	No	Don't know

18. Please provide any other information that helps to explain why you are unable to pay the filing fee in installments.

19. I (we) declare under penalty of perjury that I (we) cannot currently afford to pay the filing fee in full or in installments and that the foregoing information is true and correct.

Executed on:

Date \_\_\_\_\_

Signature of Debtor

Date \_\_\_\_\_

Signature of Codebtor \_\_\_\_\_

**DECLARATION AND SIGNATURE OF BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(h); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social-Security No. (Required by  
11 U.S.C. §110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs the document.

Address

X  
Signature of Bankruptcy Petition Preparer

Signature of Bankruptcy Petition Preparer

Date \_\_\_\_\_

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

B3B (Official Form 3B) (11/11) -- Cont.

UNITED STATES BANKRUPTCY COURT

In re: \_\_\_\_\_  
Debtor(s)

Case No. \_\_\_\_\_

ORDER ON DEBTOR'S APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE

Upon consideration of the debtor's "Application for Waiver of the Chapter 7 Filing Fee," the court orders that the application be:

[ ] GRANTED.

This order is subject to being vacated at a later time if developments in the administration of the bankruptcy case demonstrate that the waiver was unwarranted.

[ ] DENIED.

The debtor shall pay the chapter 7 filing fee according to the following terms:

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

Until the filing fee is paid in full, the debtor shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

IF THE DEBTOR FAILS TO TIMELY PAY THE FILING FEE IN FULL OR TO TIMELY MAKE INSTALLMENT PAYMENTS, THE COURT MAY DISMISS THE DEBTOR'S CASE.

[ ] SCHEDULED FOR HEARING.

A hearing to consider the debtor's "Application for Waiver of the Chapter 7 Filing Fee" shall be held on \_\_\_\_\_ at \_\_\_\_\_ am/pm at \_\_\_\_\_  
(address of courthouse)

IF THE DEBTOR FAILS TO APPEAR AT THE SCHEDULED HEARING, THE COURT MAY DEEM SUCH FAILURE TO BE THE DEBTOR'S CONSENT TO THE ENTRY OF AN ORDER DENYING THE FEE WAIVER APPLICATION BY DEFAULT.

BY THE COURT:

DATE: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

FORM B4. List of Creditors Holding 20 Largest Unsecured Claims.

Official Form 4 (12/08)

United States Bankruptcy Court  
District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
Name of creditor and complete mailing address, including zip code	Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted	Nature of claim (trade debt, bank loan, government contract, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to setoff	Amount of claim [if secured also state value of security]

Date: \_\_\_\_\_

\_\_\_\_\_  
Debtor

[Declaration as in Form 2]



### FORM B5. Involuntary Petition.

Official Form 5 (12/08)

<b>United States Bankruptcy Court</b> District of _____		<b>INVOLUNTARY PETITION</b>			
IN RE (Name of Debtor – If Individual: Last, First, Middle)		ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)			
Last four digits of Soc. Sec. or other Individual's Tax I.D. No./Complete EIN (If more than one, state all):					
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code)		MAILING ADDRESS OF DEBTOR (If different from street address)			
COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS  <div style="text-align: right;">ZIP CODE</div>		<div style="text-align: right;">ZIP CODE</div>			
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)					
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED  <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11					
<b>INFORMATION REGARDING DEBTOR (Check applicable boxes)</b>					
<b>Nature of Debts</b> (Check one box.)  Petitioners believe:  <input type="checkbox"/> Debts are primarily consumer debts <input type="checkbox"/> Debts are primarily business debts		<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <b>Type of Debtor</b>            (Form of Organization)  <input type="checkbox"/> Individual (Includes Joint Debtor)  <input type="checkbox"/> Corporation (Includes LLC and LLP)  <input type="checkbox"/> Partnership  <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)            _____         </td> <td style="width: 50%; vertical-align: top;"> <b>Nature of Business</b>            (Check one box.)  <input type="checkbox"/> Health Care Business  <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B)  <input type="checkbox"/> Railroad  <input type="checkbox"/> Stockbroker  <input type="checkbox"/> Commodity Broker  <input type="checkbox"/> Clearing Bank  <input type="checkbox"/> Other         </td> </tr> </table>		<b>Type of Debtor</b> (Form of Organization) <input type="checkbox"/> Individual (Includes Joint Debtor) <input type="checkbox"/> Corporation (Includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) _____	<b>Nature of Business</b> (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other
<b>Type of Debtor</b> (Form of Organization) <input type="checkbox"/> Individual (Includes Joint Debtor) <input type="checkbox"/> Corporation (Includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) _____	<b>Nature of Business</b> (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other				
<b>VENUE</b>		<b>FILING FEE (Check one box)</b>			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.  <input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.		<input type="checkbox"/> Full Filing Fee attached  <input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached. <i>[If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.]</i>			
<b>PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)</b>					
Name of Debtor		Case Number	Date		
Relationship		District	Judge		
<b>ALLEGATIONS</b> (Check applicable boxes)			<b>COURT USE ONLY</b>		
1. <input type="checkbox"/> Petitioner (s) are eligible to file this petition pursuant to 11 U.S.C. § 303 (b). 2. <input type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3.a. <input type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount; <div style="text-align: center;">or</div> b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.					

Official Form 5, Involuntary Petition (12/08) – Page 2

Name of Debtor \_\_\_\_\_

Case No. \_\_\_\_\_

TRANSFER OF CLAIM

☐ Check this box if there has been a transfer of any claim against the debtor or to any petitioner. Attach all documents that evidence the transfer and any statements that are required under Bankruptcy Rule 1003(a).

REQUEST FOR RELIEF

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

x \_\_\_\_\_  
Signature of Petitioner or Representative (State title)

Name of Petitioner \_\_\_\_\_ Date Signed \_\_\_\_\_

Name & Mailing  
Address of Individual \_\_\_\_\_  
Signing in Representative  
Capacity \_\_\_\_\_

x \_\_\_\_\_  
Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Name of Attorney Firm (If any) \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

x \_\_\_\_\_  
Signature of Petitioner or Representative (State title)

Name of Petitioner \_\_\_\_\_ Date Signed \_\_\_\_\_

Name & Mailing  
Address of Individual \_\_\_\_\_  
Signing in Representative  
Capacity \_\_\_\_\_

x \_\_\_\_\_  
Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Name of Attorney Firm (If any) \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

x \_\_\_\_\_  
Signature of Petitioner or Representative (State title)

Name of Petitioner \_\_\_\_\_ Date Signed \_\_\_\_\_

Name & Mailing  
Address of Individual \_\_\_\_\_  
Signing in Representative  
Capacity \_\_\_\_\_

x \_\_\_\_\_  
Signature of Attorney \_\_\_\_\_ Date \_\_\_\_\_

Name of Attorney Firm (If any) \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

PETITIONING CREDITORS

Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Name and Address of Petitioner	Nature of Claim	Amount of Claim
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims

\_\_\_\_\_ continuation sheets attached

**FORM B6. Summary of Schedules.****Form 6 (12/08) - Cover****FORM 6. SCHEDULES**

Summary of Schedules

Statistical Summary of Certain Liabilities and Related Data (28 U.S.C. § 159)

Schedule A - Real Property

Schedule B - Personal Property

Schedule C - Property Claimed as Exempt

Schedule D - Creditors Holding Secured Claims

Schedule E - Creditors Holding Unsecured Priority Claims

Schedule F - Creditors Holding Unsecured Nonpriority Claims

Schedule G - Executory Contracts and Unexpired Leases

Schedule H - Codebtors

Schedule I - Current Income of Individual Debtor(s)

Schedule J - Current Expenditures of Individual Debtors(s)

Unsworn Declaration Under Penalty of Perjury

**GENERAL INSTRUCTIONS:** The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank.

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.



Form 6 - Summary (12/08)

United States Bankruptcy Court

District Of

In re Debtor

Case No.

Chapter

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property			\$		
B - Personal Property			\$		
C - Property Claimed as Exempt					
D - Creditors Holding Secured Claims				\$	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)				\$	
F - Creditors Holding Unsecured Nonpriority Claims				\$	
G - Executory Contracts and Unexpired Leases					
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$
J - Current Expenditures of Individual Debtors(s)					\$
TOTAL			\$	\$	

FORM B6. Statistical Summary of Certain Liabilities (28 U.S.C. § 159).

Form 6 - Statistical Summary (12/08)

United States Bankruptcy Court

District Of

In re

Debtor

Case No.

Chapter

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
TOTAL	\$

State the following:

Average Income (from Schedule I, Line 16)	\$
Average Expenses (from Schedule J, Line 18)	\$
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20 )	\$

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column	\$
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column	\$
4. Total from Schedule F	\$
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)	\$





FORM B6B. Schedule B — Personal Property.

Official Form 6B (12/08)

In re \_\_\_\_\_

Debtor

Case No. \_\_\_\_\_

(If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child." See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the child of a person described in Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.				
2. Checking, savings or other finan- cial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and home- stead associations, or credit unions, brokerage houses, or cooperatives.				
3. Security deposits with public utili- ties, telephone companies, land- lords, and others.				
4. Household goods and furnishings, including audio, video, and computer equipment.				
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.				
6. Wearing apparel.				
7. Furs and jewelry.				
8. Firearms and sports, photo- graphic, and other hobby equipment.				
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.				
10. Annuities. Itemize and name each issuer.				
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)				

Official Form 6B - Cont. (12/08)

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(If known)

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.				
13. Stock and interests in incorporated and unincorporated businesses. Itemize.				
14. Interests in partnerships or joint ventures. Itemize.				
15. Government and corporate bonds and other negotiable and non-negotiable instruments.				
16. Accounts receivable.				
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.				
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.				
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.				
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.				
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.				

Official Form 6B - Cont. (12/08)

In re \_\_\_\_\_

Debtor

Case No. \_\_\_\_\_

(If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	INDICATE WHETHER THIS IS A REAL, PERSONAL, OR CHIEFLY EXEMPT, ASSESSMENT	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
22. Patents, copyrights, and other intellectual property. Give particulars.				
23. Licenses, franchises, and other general intangibles. Give particulars.				
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.				
25. Automobiles, trucks, trailers, and other vehicles and accessories.				
26. Boats, motors, and accessories.				
27. Aircraft and accessories.				
28. Office equipment, furnishings, and supplies.				
29. Machinery, fixtures, equipment, and supplies used in business.				
30. Inventory.				
31. Animals.				
32. Crops - growing or harvested. Give particulars.				
33. Farming equipment and implements.				
34. Farm supplies, chemicals, and feed.				
35. Other personal property of any kind not already listed. Itemize.				
_____ continuation sheets attached    Total ➤				\$ _____

(Include amounts from any continuation  
sheets attached. Report total also on  
Summary of Schedules.)





FORM B6D. Schedule D — Creditors Holding Secured Claims.

Official Form 6, Schedule D (12/08)

In re \_\_\_\_\_

Debtor

Case No. \_\_\_\_\_

(If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

☐

 Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.							
		VALUE \$					
ACCOUNT NO.							
		VALUE \$					
ACCOUNT NO.							
		VALUE \$					
Subtotal ► (Total of this page)						\$	\$
Total ► (Use only on last page)						\$	\$

continuation sheets attached

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

In re \_\_\_\_\_

Debtor

Case No. \_\_\_\_\_

(if known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above.)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
Subtotal(s) ▶ (Total(s) of this page)							\$	\$
Total(s) ▶ (Use only on last page)							\$	\$

Sheet no. \_\_\_\_ of \_\_\_\_ continuation sheets attached to Schedule of Creditors Holding Secured Claims

(Report also on Summary of Schedules.)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)



**FORM B6E. Schedule E — Creditors Holding Unsecured Priority Claims.**

B 6E (Official Form 6E) (04/10)

In re \_\_\_\_\_,  
DebtorCase No. \_\_\_\_\_  
(if known)**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B 6E (Official Form 6E) (04/10) – Cont.

In re \_\_\_\_\_,  
DebtorCase No. \_\_\_\_\_  
(if known)☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

\_\_\_\_\_ continuation sheets attached

B 6E (Official Form 6E) (04/10) - Cont.

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

Type of Priority for Claims Listed on This Sheet

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODITOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY
Account No.									
Account No.									
Account No.									
Account No.									
Sheet no. ____ of ____ continuation sheets attached to Schedule of Creditors Holding Priority Claims							Subtotals▶ (Totals of this page)	\$	\$
							Total▶ (Use only on last page of the completed Schedule E. Report also on the Summary of Schedules.)	\$	
							Totals▶ (Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)	\$	\$



FORM B6F. Schedule F — Creditors Holding Unsecured Nonpriority Claims.

Official Form 6F (12/08)

In re \_\_\_\_\_,

Debtor

Case No. \_\_\_\_\_

(if known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts filing a case under chapter 7, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <small>(See instructions above.)</small>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
Subtotal▶							\$
Total▶							\$

\_\_\_\_\_ continuation sheets attached

(Use only on last page of the completed Schedule F.)  
(Report also on Summary of Schedules and, if applicable, on the Statistical  
Summary of Certain Liabilities and Related Data.)

Official Form 6F - Cont. (12/08)

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_  
(if known)

## SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							

Sheet no.      of      continuation sheets attached  
 to Schedule of Creditors Holding Unsecured  
 Nonpriority Claims

Subtotal ▶ \$

Total ▶ \$

(Use only on last page of the completed Schedule F.)  
 (Report also on Summary of Schedules and, if applicable on the Statistical  
 Summary of Certain Liabilities and Related Data.)





FORM B6H. Schedule H — Codebtors.

Official Form 6H (12/08)

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight-year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112. If "a minor child" is stated, also include the name, address, and legal relationship to the minor child of a person described in Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

FORM B6I. Schedule I — Current Income of Individual Debtor(s).

Official Form 6I (12/08)

In re \_\_\_\_\_, Case No. \_\_\_\_\_  
Debtor (if known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S):	AGE(S):
Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)	\$ _____	\$ _____
2. Estimate monthly overtime	\$ _____	\$ _____
3. SUBTOTAL	\$ _____ \$ _____	
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ _____	\$ _____
b. Insurance	\$ _____	\$ _____
c. Union dues	\$ _____	\$ _____
d. Other (Specify): _____	\$ _____	\$ _____
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ _____ \$ _____	
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ _____ \$ _____	
7. Regular income from operation of business or profession or farm (Attach detailed statement)	\$ _____	\$ _____
8. Income from real property	\$ _____	\$ _____
9. Interest and dividends	\$ _____	\$ _____
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ _____	\$ _____
11. Social security or government assistance (Specify): _____	\$ _____	\$ _____
12. Pension or retirement income	\$ _____	\$ _____
13. Other monthly income (Specify): _____	\$ _____	\$ _____
14. SUBTOTAL OF LINES 7 THROUGH 13	\$ _____ \$ _____	
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	\$ _____ \$ _____	
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15; if there is only one debtor repeat total reported on line 15)	\$ _____	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:  
\_\_\_\_\_  
\_\_\_\_\_

FORM B6J. Schedule J — Current Expenditures of Individual Debtor(s).

Official Form 6J (12/08)

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	\$ _____
a. Are real estate taxes included?      Yes _____ No _____	
b. Is property insurance included?      Yes _____ No _____	
2. Utilities:    a. Electricity and heating fuel	\$ _____
b. Water and sewer	\$ _____
c. Telephone	\$ _____
d. Other _____	\$ _____
3. Home maintenance (repairs and upkeep)	\$ _____
4. Food	\$ _____
5. Clothing	\$ _____
6. Laundry and dry cleaning	\$ _____
7. Medical and dental expenses	\$ _____
8. Transportation (not including car payments)	\$ _____
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	\$ _____
10. Charitable contributions	\$ _____
11. Insurance (not deducted from wages or included in home mortgage payments)	
a. Homeowner's or renter's	\$ _____
b. Life	\$ _____
c. Health	\$ _____
d. Auto	\$ _____
e. Other _____	\$ _____
12. Taxes (not deducted from wages or included in home mortgage payments) (Specify) _____	\$ _____
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)	
a. Auto	\$ _____
b. Other _____	\$ _____
c. Other _____	\$ _____
14. Alimony, maintenance, and support paid to others	\$ _____
15. Payments for support of additional dependents not living at your home	\$ _____
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$ _____
17. Other _____	\$ _____
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	<div style="border: 1px solid black; padding: 2px;">\$ _____</div>
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: _____ _____	
20. STATEMENT OF MONTHLY NET INCOME	
a. Average monthly income from Line 15 of Schedule I	\$ _____
b. Average monthly expenses from Line 18 above	\$ _____
c. Monthly net income (a. minus b.)	\$ _____



FORM B6. Declaration Concerning Debtor's Schedules.

Official Form 6 - Declaration (12/08)

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
(if known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets (*total shown on summary page plus 2*), and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any,  
of Bankruptcy Petition Preparer

Social Security No.  
(Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

\_\_\_\_\_  
\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the \_\_\_\_\_ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the \_\_\_\_\_ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_ sheets (*Total shown on summary page plus 1*), and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

**FORM B7. Statement of Financial Affairs.**

B 7 (Official Form 7) (12/12)

**UNITED STATES BANKRUPTCY COURT**In re: \_\_\_\_\_,  
DebtorCase No. \_\_\_\_\_  
(if known)**STATEMENT OF FINANCIAL AFFAIRS**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

**DEFINITIONS**

**"In business."** A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

**"Insider."** The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any persons in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; and any managing agent of the debtor. 11 U.S.C. § 101(2), (31).

**1. Income from employment or operation of business**

☐ None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

2. Income other than from employment or operation of business

None

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

Complete a. or b., as appropriate, and c.

None

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF	AMOUNT	AMOUNT
	PAYMENTS	PAID	STILL OWING

None

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850\*. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF	AMOUNT	AMOUNT
	PAYMENTS/ TRANSFERS	PAID OR VALUE OF TRANSFERS	STILL OWING

\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.



None  
☐

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

None  
☐

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
------------------------------------	-------------------------	---------------------------------	--------------------------

None  
☐

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
--	--------------------	---

5. Repossessions, foreclosures and returns

None  
☐

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and receiverships

None  
☐

a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
---------------------------------	-----------------------	---

None  
☐

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. Gifts

None  
☐

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None  
☐

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case or **since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
---	--	-----------------

9. Payments related to debt counseling or bankruptcy

None  
☐

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
------------------------------	---	--

10. Other transfers

None  
☐

a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
--	------	--

None  
☐

b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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11. Closed financial accounts

None  
☐

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None  
☐

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

None  
☐

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
---------------------------------	-------------------	---------------------

14. Property held for another person

None  
☐

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None  
☐

If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

None  
☐

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight** years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

None  
☐

a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  
☐

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None  
☐

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
--	---------------	--------------------------

18. Nature, location and name of business

None  
☐

a. If the debtor is an individual, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or

other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

*If the debtor is a partnership*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within six years immediately preceding the commencement of this case.

*If the debtor is a corporation*, list the names, addresses, taxpayer-identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within six years immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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None

☐

b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
------	---------

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within six years immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None

☐

a. List all bookkeepers and accountants who within two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
------------------	-------------------------

None

☐

b. List all firms or individuals who within two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
------	---------	-------------------------



None  
☐

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME ADDRESS

None  
☐

d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS DATE ISSUED

20. Inventories

None  
☐

a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)
-------------------	----------------------	--

None  
☐

b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS
-------------------	--

21. Current Partners, Officers, Directors and Shareholders

None  
☐

a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
------------------	--------------------	------------------------

None  
☐

b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
------------------	-------	---

22. Former partners, officers, directors and shareholders

None  
☐

a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
------	---------	--------------------

None  
☐

b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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23. Withdrawals from a partnership or distributions by a corporation

None  
☐

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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24. Tax Consolidation Group.

None  
☐

If the debtor is a corporation, list the name and federal taxpayer-identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER-IDENTIFICATION NUMBER (EIN)
----------------------------	--------------------------------------

25. Pension Funds.

None  
☐

If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER-IDENTIFICATION NUMBER (EIN)
----------------------	--------------------------------------

\* \* \* \* \*

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date

Signature of Debtor

Date

Signature of Joint Debtor (if any)

[If completed on behalf of a partnership or corporation]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date

Signature

Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social-Security No. (Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.

Address

Signature of Bankruptcy Petition Preparer

Date

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.



FORM B8. Chapter 7 Individual Debtor's Statement of Intention.

Form 8 (12/08)

United States Bankruptcy Court  
District Of \_\_\_\_\_

In re \_\_\_\_\_ Debtor  
Case No. \_\_\_\_\_ Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

- ☐ I have filed a schedule of assets and liabilities which includes debts secured by property of the estate.
- ☐ I have filed a schedule of executory contracts and unexpired leases which includes personal property subject to an unexpired lease.
- ☐ I intend to do the following with respect to the property of the estate which secures those debts or is subject to a lease:

Description of Secured Property	Creditor's Name	Property will be Surrendered	Property is claimed as exempt	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Description of Leased Property	Lessor's Name	Lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)

Date: \_\_\_\_\_ Signature of Debtor \_\_\_\_\_

DECLARATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

Printed or Typed Name, and Title, if any, of Bankruptcy Petition Preparer \_\_\_\_\_ Social Security No. (Required under 11 U.S.C. § 110.) \_\_\_\_\_

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person or partner who signs this document.

\_\_\_\_\_  
Address

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer Date

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

**FORM B9. Notice of Commencement of Case Under the Bankruptcy Code, Meeting of Creditors, and Deadlines.**

Official Form 9  
(9/97)

**FORM 9. NOTICE OF COMMENCEMENT OF CASE UNDER THE  
BANKRUPTCY CODE, MEETING OF CREDITORS,  
AND DEADLINES**

9A.....Chapter	7, Individual/Joint, No-Asset Case
9B.....Chapter	7, Corporation/Partnership, No-Asset Case
9C.....Chapter	7, Individual/Joint, Asset Case
9D.....Chapter	7, Corporation/Partnership, Asset Case
9E.....Chapter	11, Individual/Joint Case
9E(Alt.)..Chapter	11, Individual/Joint Case
9F.....Chapter	11, Corporation/Partnership Case
9F(Alt.)..Chapter	11, Corporation/Partnership Case
9G.....Chapter	12, Individual/Joint Case
9H.....Chapter	12, Corporation/Partnership Case
9I.....Chapter	13, Individual/Joint Case

FORM B9A. Chapter 7 Individual or Joint Debtor No Asset Case.

B9A (Official Form 9A) (Chapter 7 Individual or Joint Debtor No Asset Case) (12/12)

UNITED STATES BANKRUPTCY COURT

District of

Notice of

Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on (date).]  
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter on (date) and was converted to a case under chapter 7 on (date).]

You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

Creditors -- Do not file this notice in connection with any proof of claim you submit to the court.  
See Reverse Side for Important Explanations.

Debtor(s) (name(s) and address):

Case Number:

Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:

All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):

Bankruptcy Trustee (name and address):

Attorney for Debtor(s) (name and address):

Telephone number:

Telephone number:

Meeting of Creditors

Date: / / Time: ( ) A. M. Location: ( ) P. M.

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.  
Or  
The presumption of abuse arises.  
Or  
Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines:

Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office:

For the Court:

Clerk of the Bankruptcy Court:

Telephone number:

Date:

Hours Open:



EXPLANATIONS		B9A (Official Form 9A) (12/12)
Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.	
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.	
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.	
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.	
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>	
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.	
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.	
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.	
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.	
Refer To Other Side For Important Deadlines and Notices		



EXPLANATIONS		B9B (Official Form 9B) (12/12)
Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.	
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.	
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.	
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>	
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.	
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.	
Refer To Other Side For Important Deadlines and Notices		



FORM B9C. Chapter 7 Individual or Joint Debtor Asset Case.

B9C (Official Form 9C) (Chapter 7 Individual or Joint Debtor Asset Case) (12/12)

UNITED STATES BANKRUPTCY COURT _____		District of _____	
<b>Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</b>			
[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 7 on _____ (date).]			
You may be a creditor of the debtor. <b>This notice lists important deadlines.</b> You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.			
<b>Creditors -- Do not file this notice in connection with any proof of claim you submit to the court. See Reverse Side for Important Explanations.</b>			
Debtor(s) (name(s) and address):		Case Number:	
		Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:	
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):		Bankruptcy Trustee (name and address):	
Attorney for Debtor(s) (name and address):			
Telephone number:		Telephone number:	
<b>Meeting of Creditors</b>			
Date:     /     /		Time:     (     ) A. M.     Location:	
		(     ) P. M.	
<b>Presumption of Abuse under 11 U.S.C. § 707(b)</b> <i>See "Presumption of Abuse" on the reverse side.</i>			
<i>Depending on the documents filed with the petition, one of the following statements will appear.</i>			
The presumption of abuse does not arise.			
<i>Or</i>			
The presumption of abuse arises.			
<i>Or</i>			
Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.			
<b>Deadlines:</b>			
Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines:			
<b>Deadline to File a Proof of Claim:</b>			
For all creditors (except a governmental unit):		For a governmental unit:	
<b>Creditor with a Foreign Address:</b>			
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.			
<b>Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts:</b>			
<b>Deadline to Object to Exemptions:</b>			
Thirty (30) days after the <i>conclusion</i> of the meeting of creditors.			
<b>Creditors May Not Take Certain Actions:</b>			
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.			
Address of the Bankruptcy Clerk's Office:		<b>For the Court:</b>	
Telephone number:		Clerk of the Bankruptcy Court:	
Hours Open:		Date:	

## EXPLANATIONS

B9C (Official Form 9C) (12/12)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), or (6), you must file a complaint -- or a motion if you assert the discharge should be denied under § 727(a)(8) or (a)(9) -- in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. The bankruptcy clerk's office must receive the complaint or motion and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	





EXPLANATIONS		B9D (Official Form 9D) (12/12)
Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.	
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.	
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.	
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>	
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.	
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.	
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.	
Refer To Other Side For Important Deadlines and Notices		

FORM B9E. Chapter 11 Individual or Joint Debtor Case.

B9E (Official Form 9E) (Chapter 11 Individual or Joint Debtor Case) (12/12)

UNITED STATES BANKRUPTCY COURT _____ District of _____	
Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, & Deadlines	
[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____ (date).]	
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice	
Creditors -- Do not file this notice in connection with any proof of claim you submit to the court. See Reverse Side for Important Explanations.	
Debtor(s) (name(s) and address):	Case Number:
	Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Attorney for Debtor(s) (name and address):
	Telephone number:
Meeting of Creditors	
Date:     /     /     Time:     (     ) A. M.     Location:	(     ) P. M.
Deadlines: Papers must be received by the bankruptcy clerk's office by the following deadlines:	
Deadline to File a Proof of Claim: Notice of deadline will be sent at a later time.	
Creditor with a Foreign Address: A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.	
Deadline to File a Complaint to Determine Dischargeability of Certain Debts:	
Deadline to File a Complaint Objecting to Discharge of the Debtor:  First date set for hearing on confirmation of plan Notice of that date will be sent at a later time.	
Deadline to Object to Exemptions:  Thirty (30) days after the conclusion of the meeting of creditors.	
Creditors May Not Take Certain Actions: In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.	
Address of the Bankruptcy Clerk's Office:	For the Court:
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:

EXPLANATIONS		B9E (Official Form 9E) (12/12)
Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.	
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.	
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.	
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>	
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.	
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.	
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.	
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.	
Refer To Other Side For Important Deadlines and Notices		



## B9E ALT (Official Form 9E ALT) (Chapter 11 Individual or Joint Debtor Case) (12/12)

UNITED STATES BANKRUPTCY COURT _____		District of _____	
<b>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</b>			
[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____ (date).]			
You may be a creditor of the debtor. <b>This notice lists important deadlines.</b> You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. <b>NOTE:</b> The staff of the bankruptcy clerk's office cannot give legal advice.			
<b>Creditors – Do not file this notice in connection with any proof of claim you submit to the court. See Reverse Side for Important Explanations.</b>			
Debtor(s) (name(s) and address):		Case Number:  Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:	
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):		Attorney for Debtor(s) (name and address):    Telephone number:	
<b>Meeting of Creditors</b>			
Date:     /     /     Time:    ( ) A. M.    Location: ( ) P. M.			
<b>Deadlines:</b>  Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines: <b>Deadline to File a Proof of Claim:</b>  For all creditors (except a governmental unit): _____ For a governmental unit: _____  <b>Creditor with a Foreign Address:</b> A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.			
<b>Deadline to File a Complaint to Determine Dischargeability of Certain Debts:</b>			
<b>Deadline to File a Complaint Objecting to Discharge of the Debtor:</b>  <i>First date set for hearing on confirmation of plan</i> Notice of that date will be sent at a later time.			
<b>Deadline to Object to Exemptions:</b>  Thirty (30) days after the <i>conclusion</i> of the meeting of creditors.			
<b>Creditors May Not Take Certain Actions:</b> In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.			
Address of the Bankruptcy Clerk's Office:		<b>For the Court:</b>  Clerk of the Bankruptcy Court:	
Telephone number:		Date:	
Hours Open:			

EXPLANATIONS		B9E ALT (Official Form 9E ALT) (12/12)
Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.	
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.	
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.	
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all <i>or</i> if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>	
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141 (d). Unless the court orders otherwise, however, the discharge will not be effective until completion of all payments under the plan. A discharge means that you may never try to collect the debt from the debtor except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 1141 (d) (3), you must file a complaint with the required filing fee in the bankruptcy clerk's office not later than the first date set for the hearing on confirmation of the plan. You will be sent another notice informing you of that date.	
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.	
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.	
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.	
Refer To Other Side For Important Deadlines and Notices		





## EXPLANATIONS

B9F (Official Form 9F) (12/12)

Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim or you might not be paid any money on your claim and may be unable to vote on a plan. The court has not yet set a deadline to file a Proof of Claim. If a deadline is set, you will be sent another notice. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadline for filing claims will be set in a later court order and will apply to all creditors unless the order provides otherwise. If notice of the order setting the deadline is sent to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

FORM B9FALT. Chapter 11 Corporation/Partnership Case.

B9F ALT (Official Form 9F ALT) (Chapter 11 Corporation/Partnership Case) (12/12)

UNITED STATES BANKRUPTCY COURT _____ District of _____	
<b>Notice of Chapter 11 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</b>	
[A chapter 11 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date),] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 11 on _____ (date).]	
You may be a creditor of the debtor. <b>This notice lists important deadlines.</b> You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
<b>Creditors -- Do not file this notice in connection with any proof of claim you submit to the court. See Reverse Side for Important Explanations.</b>	
Debtor(s) (name(s) and address):	Case Number:  Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:
All other names used by the Debtor(s) in the last 8 years (include trade names):	Attorney for Debtor(s) (name and address):  Telephone number:
<b>Meeting of Creditors</b>	
Date:     /     /     Time:     (   ) A. M.     Location:	(   ) P. M.
<b>Deadline to File a Proof of Claim</b>	
Proof of Claim must be <i>received</i> by the bankruptcy clerk's office by the following deadline:	
For all creditors (except a governmental unit):	For a governmental unit:
Creditor with a Foreign Address: A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.	
<b>Deadline to File a Complaint to Determine Dischargeability of Certain Debts:</b>	
<b>Creditors May Not Take Certain Actions:</b> In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.	
Address of the Bankruptcy Clerk's Office:	For the Court:
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:

EXPLANATIONS		B9F ALT (Official Form 9F ALT) (12/12)
Filing of Chapter 11 Bankruptcy Case	A bankruptcy case under Chapter 11 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 11 allows a debtor to reorganize or liquidate pursuant to a plan. A plan is not effective unless confirmed by the court. You may be sent a copy of the plan and a disclosure statement telling you about the plan, and you might have the opportunity to vote on the plan. You will be sent notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the debtor's property and may continue to operate any business.	
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.	
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court. The court, after notice and a hearing, may order that the United States trustee not convene the meeting if the debtor has filed a plan for which the debtor solicited acceptances before filing the case.	
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. You may look at the schedules that have been or will be filed at the bankruptcy clerk's office. If your claim is scheduled and is <i>not</i> listed as disputed, contingent, or unliquidated, it will be allowed in the amount scheduled unless you filed a Proof of Claim or you are sent further notice about the claim. Whether or not your claim is scheduled, you are permitted to file a Proof of Claim. If your claim is not listed at all or if your claim is listed as disputed, contingent, or unliquidated, then you must file a Proof of Claim by the "Deadline to File Proof of Claim" listed on the front side, or you might not be paid any money on your claim and may be unable to vote on a plan. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>	
Discharge of Debts	Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. <i>See</i> Bankruptcy Code § 1141 (d). A discharge means that you may never try to collect the debt from the debtor, except as provided in the plan. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 1141 (d) (6) (A), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.	
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.	
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.	
Refer To Other Side For Important Deadlines and Notices		



## B9G (Official Form 9G) (Chapter 12 Individual or Joint Debtor Family Farmer or Family Fisherman) (12/12)

<b>B-3</b>		<b>(Official Form 3)</b>	<b>Chapter 12 Individual or Joint Debtor Family Farmer or Family Fisherman (12-12)</b>
UNITED STATES BANKRUPTCY COURT _____		District of _____	
<b>Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</b>			
[The debtor(s) listed below filed a chapter 12 bankruptcy case on _____ (date).] or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on _____ (date) and was converted to a case under chapter 12 on _____ (date).]			
You may be a creditor of the debtor. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. <b>NOTE:</b> The staff of the bankruptcy clerk's office cannot give legal advice.			
<b>Creditors -- Do not file this notice in connection with any proof of claim you submit to the court. See Reverse Side for Important Explanations.</b>			
Debtor(s) (name(s) and address):  		Case Number:  Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN: _____	
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):  		Bankruptcy Trustee (name and address):  	
Attorney for Debtor(s) (name and address):  			
Telephone number: _____		Telephone number: _____	
<b>Meeting of Creditors</b>			
Date:        /      /	Time:     ( ) A.M. ( ) P.M.	Location: _____	
<b>Deadlines:</b>			
Papers must be received by the bankruptcy clerk's office by the following deadlines:			
<b>Deadline to File a Proof of Claim:</b>			
For all creditors(except a governmental unit): _____		For a governmental unit: _____	
<b>Creditor with a Foreign Address:</b>			
A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.			
<b>Deadline to File a Complaint to Determine Dischargeability of Certain Debts:</b>			
<b>Deadline to Object to Exemptions:</b>			
Thirty (30) days after the conclusion of the meeting of creditors.			
<b>Filing of Plan, Hearing on Confirmation of Plan</b>			
[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held: Date: _____ Time: _____ Location: _____ ] or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]			
<b>Creditors May Not Take Certain Actions:</b>			
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.			
Address of the Bankruptcy Clerk's Office:  		For the Court:  Clerk of the Bankruptcy Court: _____	
Telephone number: _____			
Hours Open: _____		Date: _____	

## EXPLANATIONS

## B9G (Official Form 9G) (12/12)

Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

**B9H (Official Form 9H) (Chapter 12 Corporation/Partnership Family Farmer or Family Fisherman) (12/12)**

UNITED STATES BANKRUPTCY COURT _____ District of _____	
<b>Notice of Chapter 12 Bankruptcy Case, Meeting of Creditors, &amp; Deadlines</b>	
[The debtor [corporation] or [partnership] listed below filed a chapter 12 bankruptcy case on _____ (date).] or [A bankruptcy case concerning the debtor [corporation] or [partnership] listed below was originally filed under chapter or _____ (date) and was converted to a case under chapter 12 on _____ (date).]	
You may be a creditor of the debtor. <b>This notice lists important deadlines.</b> You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.	
<b>Creditors -- Do not file this notice in connection with any proof of claim you submit to the court. See Reverse Side for Important Explanations.</b>	
Debtor(s) (name(s) and address):   All other names used by the Debtor(s) in the last 8 years (include trade names):  Attorney for Debtor(s) (name and address):  Telephone number:	Case Number:  Last four digits of Social-Security or Individual Taxpayer-ID (ITIN) No(s)/Complete EIN:  Bankruptcy Trustee (name and address):  Telephone number:
<b>Meeting of Creditors</b> Date:     /     /     Time:    ( ) A. M.    Location: ( ) P. M.	
<b>Deadlines:</b> Papers must be <i>received</i> by the bankruptcy clerk's office by the following deadlines:  <b>Deadline to File a Proof of Claim:</b>  For all creditors(except a governmental unit):                      For a governmental unit:  <b>Creditor with a Foreign Address:</b> A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.	
<b>Deadline to File a Complaint to Determine Dischargeability of Certain Debts:</b>	
<b>Filing of Plan, Hearing on Confirmation of Plan</b>  [The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held: Date: _____ Time: _____ Location: _____ ] or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.] or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]	
<b>Creditors May Not Take Certain Actions:</b> In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.	
Address of the Bankruptcy Clerk's Office:	<b>For the Court:</b>  Clerk of the Bankruptcy Court:
Telephone number: Hours Open:	Date:



EXPLANATIONS		B9H (Official Form 9H) (12/12)
Filing of Chapter 12 Bankruptcy Case	A bankruptcy case under Chapter 12 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor listed on the front side, and an order for relief has been entered. Chapter 12 allows family farmers and family fishermen to adjust their debts pursuant to a plan. A plan is not effective unless confirmed by the court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business unless the court orders otherwise.	
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.	
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1201. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; and starting or continuing lawsuits or foreclosures. Under certain circumstances, the stay may be limited in duration or not exist at all, although the debtor may have the right to request the court to extend or impose a stay.	
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor's representative must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.	
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>	
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.	
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.	
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.	
Refer To Other Side For Important Deadlines and Notices		



## EXPLANATIONS

B91 (Official Form 91) (12/12)

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] or [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] or [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date specified in a notice filed with the court.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid, you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. <b>Filing Deadline for a Creditor with a Foreign Address:</b> The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline. <i>Do not include this notice with any filing you make with the court.</i>
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to a discharge under Bankruptcy Code § 1328(f), you must file a motion objecting to discharge in the bankruptcy clerk's office by the "Deadline to Object to Debtor's Discharge or to Challenge the Dischargeability of Certain Debts" listed on the front of this form. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2) or (4), you must file a complaint in the bankruptcy clerk's office by the same deadline. The bankruptcy clerk's office must receive the motion or the complaint and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Creditor with a Foreign Address	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	



FORM B10. Proof of Claim.

B 10 (Official Form 10) (12/12)

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor:	Case Number:	
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property):		
Name and address where notices should be sent:		COURT USE ONLY
Telephone number: email:		<input type="checkbox"/> Check this box if this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where payment should be sent (if different from above):		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number: email:		
1. Amount of Claim as of Date Case Filed: \$ _____		
If all or part of the claim is secured, complete item 4.		
If all or part of the claim is entitled to priority, complete item 5.		
<input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: _____ (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Value of Property: \$ _____		Basis for perfection: _____
Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of Secured Claim: \$ _____  Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).  Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B 10 (Official Form 10) (12/12)

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**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

**8. Signature:** (See instruction #8)

Check the appropriate box.

☐ I am the creditor.    ☐ I am the creditor's authorized agent.    ☐ I am the trustee, or the debtor, or their authorized agent.    ☐ I am a guarantor, surety, indorser, or other codebtor.  
(See Bankruptcy Rule 3004.)    (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address and telephone number (if different from notice address above): \_\_\_\_\_

(Signature)

(Date)

Telephone number \_\_\_\_\_ email \_\_\_\_\_

*Penalty for presenting fraudulent claim:* Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

#### INSTRUCTIONS FOR PROOF OF CLAIM FORM

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.*

#### Items to be completed in Proof of Claim form

##### Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

##### Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

##### 1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

##### 2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury, wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

##### 3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

##### 3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

##### 3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

##### 4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

##### 5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

##### 6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

##### 7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

##### 8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

B 10 (Official Form 10) (12/12)

DEFINITIONS	INFORMATION
<p><b>Debtor</b> A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p><b>Creditor</b> A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p> <p><b>Claim</b> A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p><b>Proof of Claim</b> A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.</p> <p><b>Secured Claim Under 11 U.S.C. § 506 (a)</b> A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.</p>	<p>A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p><b>Unsecured Claim</b> An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.</p> <p><b>Claim Entitled to Priority Under 11 U.S.C. § 507 (a)</b> Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p> <p><b>Redacted</b> A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.</p> <p><b>Evidence of Perfection</b> Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.</p> <p><b>Acknowledgment of Filing of Claim</b> To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (<a href="http://www.pacer.psc.uscourts.gov">www.pacer.psc.uscourts.gov</a>) for a small fee to view your filed proof of claim.</p> <p><b>Offers to Purchase a Claim</b> Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(c), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>



FORM B10A. Mortgage Proof of Claim Attachment.

B 10A (Attachment A) (12/11)

Mortgage Proof of Claim Attachment

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See Bankruptcy Rule 3001(c)(2).

Name of debtor: Case number:

Name of creditor: Last four digits of any number you use to identify the debtor's account:

Part 1: Statement of Principal and Interest Due as of the Petition Date

Itemize the principal and interest due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on your Proof of Claim form).

1. Principal due (1) \$

Interest rate	From mm/dd/yyyy	To mm/dd/yyyy	Amount
%			\$
%			\$
%			+
Total interest due as of the petition date			\$ Copy total here (2) + \$

3. Total principal and interest due (3) \$

Part 2: Statement of Prepetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges due on the claim as of the petition date (included in the Amount of Claim listed in Item 1 on the Proof of Claim form).

Description	Dates incurred	Amount
1. Late charges		(1) \$
2. Non-sufficient funds (NSF) fees		(2) \$
3. Attorney's fees		(3) \$
4. Filing fees and court costs		(4) \$
5. Advertisement costs		(5) \$
6. Sheriff/auctioneer fees		(6) \$
7. Title costs		(7) \$
8. Recording fees		(8) \$
9. Appraisal/broker's price opinion fees		(9) \$
10. Property inspection fees		(10) \$
11. Tax advances (non-escrow)		(11) \$
12. Insurance advances (non-escrow)		(12) \$
13. Escrow shortage or deficiency (Do not include amounts that are part of any installment payment listed in Part 3.)		(13) \$
14. Property preservation expenses. Specify:		(14) \$
15. Other. Specify:		(15) \$
16. Other. Specify:		(16) \$
17. Other. Specify:		(17) + \$
18. Total prepetition fees, expenses, and charges. Add all of the amounts listed above.		(18) \$

Part 3. Statement of Amount Necessary to Cure Default as of the Petition Date

Does the installment payment amount include an escrow deposit?

- ☐ No
- ☐ Yes Attach to the Proof of Claim form an escrow account statement prepared as of the petition date in a form consistent with applicable nonbankruptcy law.

1. Installment payments due	Date last payment received by creditor mm/dd/yyyy	
	Number of installment payments due	(1) _____
2. Amount of installment payments due	_____ installments @	\$ _____
	_____ installments @	\$ _____
	_____ installments @	+ \$ _____
	Total installment payments due as of the petition date	\$ _____ Copy total here ▶ (2) \$ _____
3. Calculation of cure amount	Add total prepetition fees, expenses, and charges	Copy total from Part 2 here ▶ + \$ _____
	Subtract total of unapplied funds (funds received but not credited to account)	- \$ _____
	Subtract amounts for which debtor is entitled to a refund	- \$ _____
	Total amount necessary to cure default as of the petition date	(3) \$ _____

Copy total onto Item 4 of Proof of Claim form

FORM B10S1. Notice of Mortgage Payment Change.

B 10S1 (Supplement 1) (12/11)

UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_

Chapter 13

Notice of Mortgage Payment Change

If you file a claim secured by a security interest in the debtor's principal residence provided for under the debtor's plan pursuant to § 1322(b)(5), you must use this form to give notice of any changes in the installment payment amount. File this form as a supplement to your proof of claim at least 21 days before the new payment amount is due. See Bankruptcy Rule 3002.1.

Name of creditor: \_\_\_\_\_

Court claim no. (if known): \_\_\_\_\_

Last four digits of any number  
you use to identify the debtor's  
account: \_\_\_\_\_

Date of payment change: \_\_\_\_\_  
Must be at least 21 days after date of  
this notice mm/dd/yyyy

New total payment: \$ \_\_\_\_\_  
Principal, interest, and escrow, if any

Part 1: Escrow Account Payment Adjustment

Will there be a change in the debtor's escrow account payment?

- ☐ No
- ☐ Yes Attach a copy of the escrow account statement prepared in a form consistent with applicable nonbankruptcy law. Describe the basis for the change. If a statement is not attached, explain why: \_\_\_\_\_

Current escrow payment: \$ \_\_\_\_\_ New escrow payment: \$ \_\_\_\_\_

Part 2: Mortgage Payment Adjustment

Will the debtor's principal and interest payment change based on an adjustment to the interest rate in the debtor's variable-rate note?

- ☐ No
- ☐ Yes Attach a copy of the rate change notice prepared in a form consistent with applicable nonbankruptcy law. If a notice is not attached, explain why: \_\_\_\_\_

Current interest rate: \_\_\_\_\_ % New interest rate: \_\_\_\_\_ %

Current principal and interest payment: \$ \_\_\_\_\_ New principal and interest payment: \$ \_\_\_\_\_

Part 3: Other Payment Change

Will there be a change in the debtor's mortgage payment for a reason not listed above?

- ☐ No
- ☐ Yes Attach a copy of any documents describing the basis for the change, such as a repayment plan or loan modification agreement. (Court approval may be required before the payment change can take effect.)

Reason for change: \_\_\_\_\_

Current mortgage payment: \$ \_\_\_\_\_ New mortgage payment: \$ \_\_\_\_\_



**Part 4: Sign Here**

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- ☐ I am the creditor.      ☐ I am the creditor's authorized agent.  
(Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

**X** \_\_\_\_\_ Date \_\_\_\_\_  
Signature mm/dd/yyyy

**Print:** \_\_\_\_\_ Title \_\_\_\_\_  
First Name Middle Name Last Name

**Company** \_\_\_\_\_

**Address** \_\_\_\_\_  
Number Street  
City State ZIP Code

**Contact phone** \_\_\_\_\_ **Email** \_\_\_\_\_

FORM B10S2. Notice of Postpetition Mortgage Fees, Expenses, and Charges.

B 10S2 (Supplement 2) (12/11)

UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_  
Chapter 13

Notice of Postpetition Mortgage Fees, Expenses, and Charges

If you hold a claim secured by a security interest in the debtor's principal residence, you must use this form to give notice of any postpetition fees, expenses, and charges that you assert are recoverable against the debtor or against the debtor's principal residence. File this form as a supplement to your proof of claim. See Bankruptcy Rule 3002.1.

Name of creditor: \_\_\_\_\_ Court claim no. (if known): \_\_\_\_\_

Last four digits of any number you use to  
identify the debtor's account: \_\_\_\_\_

Does this notice supplement a prior notice of postpetition fees,  
expenses, and charges?

- ☐ No
- ☐ Yes. Date of the last notice: \_\_\_\_\_  
mm/dd/yyyy

Part 1: Itemize Postpetition Fees, Expenses, and Charges

Itemize the fees, expenses, and charges incurred on the debtor's mortgage account after the petition was filed. Do not include any escrow account disbursements or any amounts previously itemized in a notice filed in this case or ruled on by the bankruptcy court.

Description	Dates incurred	Amount
1. Late charges	_____	(1) \$ _____
2. Non-sufficient funds (NSF) fees	_____	(2) \$ _____
3. Attorney fees	_____	(3) \$ _____
4. Filing fees and court costs	_____	(4) \$ _____
5. Bankruptcy/Proof of claim fees	_____	(5) \$ _____
6. Appraisal/Broker's price opinion fees	_____	(6) \$ _____
7. Property inspection fees	_____	(7) \$ _____
8. Tax advances (non-escrow)	_____	(8) \$ _____
9. Insurance advances (non-escrow)	_____	(9) \$ _____
10. Property preservation expenses. Specify: _____	_____	(10) \$ _____
11. Other. Specify: _____	_____	(11) \$ _____
12. Other. Specify: _____	_____	(12) \$ _____
13. Other. Specify: _____	_____	(13) \$ _____
14. Other. Specify: _____	_____	(14) \$ _____

The debtor or trustee may challenge whether the fees, expenses, and charges you listed are required to be paid. See 11 U.S.C. § 1322(b)(5) and Bankruptcy Rule 3002.1.

Part 2: Sign Here

The person completing this Notice must sign it. Sign and print your name and your title, if any, and state your address and telephone number if different from the notice address listed on the proof of claim to which this Supplement applies.

Check the appropriate box.

- ☐ I am the creditor.
- ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.)

I declare under penalty of perjury that the information provided in this Notice is true and correct to the best of my knowledge, information, and reasonable belief.

X

Signature

Date

mm/dd/yyyy

Print:

First Name

Middle Name

Last Name

Title

Company

Address

Number

Street

City

State

ZIP Code

Contact phone

Email



**FORM B11A. General Power of Attorney.**Official Form 11A  
6/90**United States Bankruptcy Court**

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**GENERAL POWER OF ATTORNEY**To \_\_\_\_\_ of \* \_\_\_\_\_, and  
\_\_\_\_\_ of \* \_\_\_\_\_

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the debtor in the above-entitled case; [if appropriate] to vote for a trustee of the estate of the debtor and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

By \_\_\_\_\_

as \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

[If executed by an individual] Acknowledged before me on \_\_\_\_\_

[If executed on behalf of a partnership] Acknowledged before me on \_\_\_\_\_,  
by \_\_\_\_\_, who says that he [or she] is a member of the partnership named above  
and is authorized to execute this power of attorney in its behalf.

[If executed on behalf of a corporation] Acknowledged before me on \_\_\_\_\_,  
by \_\_\_\_\_, who says that he [or she] is \_\_\_\_\_ of the corporation  
named above and is authorized to execute this power of attorney in its behalf.

\_\_\_\_\_  
[Official character.]

\* State mailing address.

FORM B11B. Special Power of Attorney.

Official Form 11B  
6/90

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

SPECIAL POWER OF ATTORNEY

To \_\_\_\_\_ of \* \_\_\_\_\_, and  
\_\_\_\_\_ of \* \_\_\_\_\_

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned [if desired: and with full power of substitution,] to attend the meeting of creditors of the debtor or any adjournment thereof, and to vote in my behalf on any question that may be lawfully submitted to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of the debtor.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

By \_\_\_\_\_

as \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

[If executed by an individual] Acknowledged before me on \_\_\_\_\_

[If executed on behalf of a partnership] Acknowledged before me \_\_\_\_\_,  
by \_\_\_\_\_, who says that he [or she] is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[If executed on behalf of a corporation] Acknowledged before me on \_\_\_\_\_,  
by \_\_\_\_\_, who says that he [or she] is \_\_\_\_\_ of the corporation  
named above and is authorized to execute this power of attorney in its behalf.

\_\_\_\_\_

[Official character.] \_\_\_\_\_

\* State mailing address.

**FORM B12. Order and Notice for Hearing on Disclosure Statement.**

Official Form 12  
(12/03)

**Form 12. ORDER AND NOTICE FOR HEARING  
ON DISCLOSURE STATEMENT**

*[Caption as in Form 16A]*

**ORDER AND NOTICE FOR HEARING  
ON DISCLOSURE STATEMENT**

To the debtor, its creditors, and other parties in interest:

A disclosure statement and a plan under chapter 11 [or chapter 9] of the Bankruptcy Code having been filed by \_\_\_\_\_ on \_\_\_\_\_,

IT IS ORDERED and notice is hereby given, that:

1. The hearing to consider the approval of the disclosure statement shall be held at: \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_.m.

2. \_\_\_\_\_ is fixed as the last day for filing and serving in accordance with Fed. R. Bankr. P. 3017(a) written objections to the disclosure statement.

3. Within \_\_\_\_\_ days after entry of this order, the disclosure statement and plan shall be distributed in accordance with Fed. R. Bankr. P. 3017(a).

4. Requests for copies of the disclosure statement and plan shall be mailed to the debtor in possession [or trustee or debtor or \_\_\_\_\_] at \* \_\_\_\_\_

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
*United States Bankruptcy Judge*

\* State mailing address



# **FORM B13. Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof.**

Official Form 13  
(12/03)

## **Form 13. ORDER APPROVING DISCLOSURE STATEMENT AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, COMBINED WITH NOTICE THEREOF**

*[Caption as in Form 16A]*

## **ORDER APPROVING DISCLOSURE STATEMENT AND FIXING TIME FOR FILING ACCEPTANCES OR REJECTIONS OF PLAN, COMBINED WITH NOTICE THEREOF**

A disclosure statement under chapter 11 of the Bankruptcy Code having been filed by \_\_\_\_\_, on \_\_\_\_\_ [if appropriate, and by \_\_\_\_\_, on \_\_\_\_\_], referring to a plan under chapter 11 of the Code filed by \_\_\_\_\_, on \_\_\_\_\_ [if appropriate, and by \_\_\_\_\_, on \_\_\_\_\_ respectively] [if appropriate, as modified by a modification filed on \_\_\_\_\_]; and

It having been determined after hearing on notice that the disclosure statement [or statements] contain[s] adequate information:

IT IS ORDERED, and notice is hereby given, that:

A. The disclosure statement filed by \_\_\_\_\_ dated \_\_\_\_\_ [if appropriate, and by \_\_\_\_\_, dated \_\_\_\_\_] is [are] approved.

B. \_\_\_\_\_ is fixed as the last day for filing written acceptances or rejections of the plan [or plans] referred to above.

C. Within \_\_\_\_\_ days after the entry of this order, the plan [or plans] or a summary or summaries thereof approved by the court, [and [if appropriate] a summary approved by the court of its opinion, if any, dated \_\_\_\_\_, approving the disclosure statement [or statements]], the disclosure statement [or statements], and a ballot conforming to Official Form 14 shall be mailed to creditors, equity security holders, and other parties in interest, and shall be transmitted to the United States trustee, as provided in Fed. R. Bankr. P. 3017(d).

D. If acceptances are filed for more than one plan, preferences among the plans so accepted may be indicated.

E. [If appropriate] \_\_\_\_\_ is fixed for the hearing on confirmation of the plan [or plans].

F. [If appropriate] \_\_\_\_\_ is fixed as the last day for filing and serving pursuant to Fed.

R. Bankr. P. 3020(b)(1) written objections to confirmation of the plan.

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
United States Bankruptcy Judge

*[If the court directs that a copy of the opinion should be transmitted in lieu of or in addition to the summary thereof, the appropriate change should be made in paragraph C of this order.]*

**FORM B14. Ballot for Accepting or Rejecting Plan.**

Official Form 14  
(12/03)

**Form 14. CLASS / / BALLOT FOR ACCEPTING OR REJECTING  
PLAN OF REORGANIZATION**

*[Caption as in Form 16A]*

**CLASS / / BALLOT FOR ACCEPTING OR REJECTING  
PLAN OF REORGANIZATION**

*[Proponent]* filed a plan of reorganization dated *[Date]* (the "Plan") for the Debtor in this case. The Court has *[conditionally]* approved a disclosure statement with respect to the Plan (the "Disclosure Statement"). The Disclosure Statement provides information to assist you in deciding how to vote your ballot. If you do not have a Disclosure Statement, you may obtain a copy from *[name, address, telephone number and telecopy number of proponent/proponent's attorney.]* Court approval of the disclosure statement does not indicate approval of the Plan by the Court.

You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and your classification and treatment under the Plan. Your *[claim] [equity interest]* has been placed in class / / under the Plan. If you hold claims or equity interests in more than one class, you will receive a ballot for each class in which you are entitled to vote.

If your ballot is not received by *[name and address of proponent's attorney or other appropriate address]* on or before *[date]*, and such deadline is not extended, your vote will not count as either an acceptance or rejection of the Plan.

If the Plan is confirmed by the Bankruptcy Court it will be binding on you whether or not you vote.

**ACCEPTANCE OR REJECTION OF THE PLAN**

*[At this point the ballot should provide for voting by the particular class of creditors or equity holders receiving the ballot using one of the following alternatives:]*

*[If the voter is the holder of a secured, priority, or unsecured nonpriority claim:]*

The undersigned, the holder of a Class / / claim against the Debtor in the unpaid amount of Dollars (\$ )

*[or, if the voter is the holder of a bond, debenture, or other debt security:]*

The undersigned, the holder of a Class / / claim against the Debtor, consisting of Dollars (\$) principal amount of *[describe bond, debenture, or other debt security]* of the Debtor (For purposes of this Ballot, it is not necessary and you should not adjust the principal amount for any accrued or unmatured interest.)

*[or, if the voter is the holder of an equity interest:]*

The undersigned, the holder of Class / / equity interest in the Debtor, consisting of \_\_\_\_\_ shares or other interests of *[describe equity interest]* in the Debtor

Official Form 14 continued  
(12/03)

*[In each case, the following language should be included:]*

(Check one box only)

☐ ACCEPTS THE PLAN

☐ REJECTS THE PLAN

Dated: \_\_\_\_\_

Print or type name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title (if corporation or partnership) \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

RETURN THIS BALLOT TO:

*[Name and address of proponent's attorney or other appropriate address]*



FORM B15. Order Confirming Plan.

Form B15  
(Rev. 12/01)

Form 15. ORDER CONFIRMING PLAN

[Caption as in Form 16A]

ORDER CONFIRMING PLAN

The plan under chapter 11 of the Bankruptcy Code filed by \_\_\_\_\_, on \_\_\_\_\_ [if applicable, as modified by a modification filed on \_\_\_\_\_], or a summary thereof, having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) [or, if appropriate, 11 U.S.C. § 1129(b)] have been satisfied;

IT IS ORDERED that:

The plan filed by \_\_\_\_\_, on \_\_\_\_\_, [If appropriate, include dates and any other pertinent details of modifications to the plan] is confirmed. [If the plan provides for an injunction against conduct not otherwise enjoined under the Code, include the information required by Rule 3020.]

A copy of the confirmed plan is attached.

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
United States Bankruptcy Judge.

FORM B16A. Caption.

Official Form 16A (12/08)

Form 16A. CAPTION (FULL)

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_ )

*[Set forth here all names including married,* )  
*maiden, and trade names used by debtor within* )  
*last 8 years.]* )

Debtor )

Case No. \_\_\_\_\_

Address \_\_\_\_\_ )

\_\_\_\_\_ )

Chapter \_\_\_\_\_

Last four digits of Social Security or Individual Tax- )  
payer Identification (ITIN) No(s)., (if any): \_\_\_\_\_ )

Employer's Tax Identification (EIN) No(s). (if any): \_\_\_\_\_ )

\_\_\_\_\_ )

*[Designation of Character of Paper]*

FORM B16B. Caption (Short Title).

Official Form 16B  
12/94

FORM 16B. CAPTION (SHORT TITLE)

*(May be used if 11 U.S.C. § 342(c) is not applicable)*

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

*[Designation of Character of Paper]*



**FORM B16C. [Abrogated.]**

Official Form 16C  
(12/03)

**FORM 16C. CAPTION OF COMPLAINT IN ADVERSARY PROCEEDING  
FILED BY A DEBTOR**

[Abrogated]

**FORM B16D. Caption for Use in Adversary Proceeding Other Than for a Complaint Filed by a Debtor.**

Official Form 16D  
(12/04)

**Form 16D. CAPTION FOR USE IN ADVERSARY PROCEEDING**

**United States Bankruptcy Court**

\_\_\_\_\_ District Of \_\_\_\_\_

In re _____	)	
<i>Debtor</i>	)	Case No. _____
	)	
	)	
	)	Chapter _____
_____	)	
<i>Plaintiff</i>	)	
	)	
	)	
	)	
	)	
_____	)	Adv. Proc. No. _____
<i>Defendant</i>	)	

**COMPLAINT** [*or other Designation*]

[If in a Notice of Appeal (see Form 17) or other notice filed and served by a debtor, this caption must be altered to include the debtor's address and Employer's Tax Identification Number(s) or last four digits of Social Security Number(s) as in Form 16A.]

FORM B17. Notice of Appeal Under 28 U.S.C. § 158(a) or (b) from a Judgment, Order or Decree of a Bankruptcy Court.

Official Form 17  
(12/04)

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

[Caption as in Form 16A, 16B, or 16D, as appropriate]

NOTICE OF APPEAL

\_\_\_\_\_, the plaintiff [or defendant or other party] appeals under 28 U.S.C. § 158(a) or (b) from the judgment, order, or decree of the bankruptcy judge (describe) entered in this adversary proceeding [or other proceeding, describe type] on the \_\_\_\_\_ day of \_\_\_\_\_, (month) (year).

The names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_  
Attorney for Appellant (or Appellant, if not represented by an Attorney)

Attorney Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the district court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. § 158(c), to have the appeal heard by the district court.

If a child support creditor or its representative is the appellant, and if the child support creditor or its representative files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.



FORM B18. Discharge of Debtor.

Official Form 18 (12/08)

United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re _____	)	
<i>[Set forth here all names including married,</i>	)	
<i>maiden, and trade names used by debtor within</i>	)	
<i>last 8 years.]</i>	)	
Debtor	)	Case No. _____
	)	
Address _____	)	
_____	)	Chapter 7
	)	
Last four digits of Social Security or other Individual Taxpayer	)	
Identification No(s)(if any): _____	)	
	)	
Employer's Tax Identification No(s).(EIN) [if any]: _____	)	
_____	)	

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:** The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

Dated: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_  
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Official Form 18 (12/08) - Cont.

**EXPLANATION OF BANKRUPTCY DISCHARGE  
IN A CHAPTER 7 CASE**

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

**Collection of Discharged Debts Prohibited**

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property: There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.]* A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

**Debts that are Discharged**

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

**Debts that are Not Discharged.**

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

**FORM B19. Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer.**

B19 (Official Form 19) (12/07)

**United States Bankruptcy Court**

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**DECLARATION AND SIGNATURE OF NON-ATTORNEY  
BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared the accompanying document(s) listed below for compensation and have provided the debtor with a copy of the document(s) and the attached notice as required by 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Accompanying documents:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Printed or Typed Name and Title, if any, of  
Bankruptcy Petition Preparer:

\_\_\_\_\_  
Social-Security No. of Bankruptcy Petition  
Preparer (Required by 11 U.S.C. § 110):  
\_\_\_\_\_

*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social-security number of the officer, principal, responsible person, or partner who signs this document.*

\_\_\_\_\_  
Address

X  
Signature of Bankruptcy Petition Preparer      Date \_\_\_\_\_

Names and social-security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.*

**A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.**



B19 (Official Form 19) (12/07) - Cont.

**NOTICE TO DEBTOR BY NON-ATTORNEY BANKRUPTCY PETITION PREPARER**  
*[Must be filed with any document(s) prepared by a bankruptcy petition preparer.]*

I am a bankruptcy petition preparer. I am not an attorney and may not practice law or give legal advice. Before preparing any document for filing as defined in § 110(a)(2) of the Bankruptcy Code or accepting any fees, I am required by law to provide you with this notice concerning bankruptcy petition preparers. Under the law, § 110 of the Bankruptcy Code (11 U.S.C. § 110), I am forbidden to offer you any legal advice, including advice about any of the following:

- whether to file a petition under the Bankruptcy Code (11 U.S.C. § 101 et seq.);
- whether commencing a case under chapter 7, 11, 12, or 13 is appropriate;
- whether your debts will be eliminated or discharged in a case under the Bankruptcy Code;
- whether you will be able to retain your home, car, or other property after commencing a case under the Bankruptcy Code;
- the tax consequences of a case brought under the Bankruptcy Code;
- the dischargeability of tax claims;
- whether you may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;
- how to characterize the nature of your interests in property or your debts; or
- bankruptcy procedures and rights.

*[The notice may provide additional examples of legal advice that a bankruptcy petition preparer is not authorized to give.]*

In addition, under 11 U.S.C. § 110(h), the Supreme Court or the Judicial Conference of the United States may promulgate rules or guidelines setting a maximum allowable fee chargeable by a bankruptcy petition preparer. As required by law, I have notified you of this maximum allowable fee, if any, before preparing any document for filing or accepting any fee from you.

_____ Signature of Debtor	_____ Date	_____ Joint Debtor (if any)	_____ Date
------------------------------	---------------	--------------------------------	---------------

*[In a joint case, both spouses must sign.]*

FORM B20A. Notice of Motion or Objection.

B20A (Official Form 20A) (Notice of Motion or Objection) (12/10)

United States Bankruptcy Court

District of

In re

[Set forth here all names including married, maiden, and trade names used by debtor within last 8 years.]

Debtor

Case No.

Address

Chapter

Last four digits of Social Security or Individual Tax-payer Identification (ITIN) No(s).(if any):

Employer's Tax Identification (EIN) No(s).(if any):

NOTICE OF [MOTION TO ] [OBJECTION TO ]

has filed papers with the court to [relief sought in motion or objection].

**Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then on or before (date) , you or your attorney must:

[File with the court a written request for a hearing {or, if the court requires a written response, an answer, explaining your position} at:

{address of the bankruptcy clerk's office}

If you mail your {request} {response} to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

{movant's attorney's name and address}

{names and addresses of others to be served}]

[Attend the hearing scheduled to be held on (date) , (year) , at \_\_\_\_ a.m./p.m. in Courtroom\_\_\_\_, United States Bankruptcy Court, {address}.]

[Other steps required to oppose a motion or objection under local rule or court order.]

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date:

Signature:

Name:

Address

FORM B20B. Notice of Objection to Claim.

B20B (Official Form 20B) (Notice of Objection to Claim) (12/10)

United States Bankruptcy Court  
District of \_\_\_\_\_

In re	)	
<i>[Set forth here all names including married, maiden, and</i>	)	
<i>trade names used by debtor within last 8 years.]</i>	)	
	)	
Debtor	)	Case No. _____
	)	
Address _____	)	
_____	)	
	)	Chapter _____
Last four digits of Social Security or Individual Tax-payer Identification	)	
(ITIN) No(s), (if any): _____	)	
	)	
Employer's Tax Identification (EIN) No(s), (if any): _____	)	
_____	)	

NOTICE OF OBJECTION TO CLAIM

\_\_\_\_\_ has filed an objection to your claim in this bankruptcy case.

**Your claim may be reduced, modified, or eliminated.** You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the court to eliminate or change your claim, then on or before (date), you or your lawyer must:

{If required by local rule or court order.}

[File with the court a written response to the objection, explaining your position, at:

{address of the bankruptcy clerk's office}

If you mail your response to the court for filing, you must mail it early enough so that the court will receive it on or before the date stated above.

You must also mail a copy to:

{objector's attorney's name and address}

{names and addresses of others to be served}]

Attend the hearing on the objection, scheduled to be held on (date), (year), at \_\_\_\_ a.m./p.m. in Courtroom \_\_\_\_, United States Bankruptcy Court, {address}.

If you or your attorney do not take these steps, the court may decide that you do not oppose the objection to your claim.

Date: _____	Signature: _____
	Name: _____
	Address _____



**FORM B21. Statement of Social Security Number.**

Do not file this form as part of the public case file. This form must be submitted separately and must not be included in the court's public electronic records. Please consult local court procedures for submission requirements.

B21 (Official Form 21) (12/12)

## UNITED STATES BANKRUPTCY COURT

In re \_\_\_\_\_ )  
 [Set forth here all names including married, maiden, )  
 and trade names used by debtor within last 8 years] )  
 )  
 Debtor ) Case No. \_\_\_\_\_  
 Address \_\_\_\_\_ )  
 \_\_\_\_\_ ) Chapter \_\_\_\_\_  
 \_\_\_\_\_ )  
 Last four digits of Social-Security or Individual Taxpayer- )  
 Identification (ITIN) No(s), (if any): )  
 \_\_\_\_\_ )  
 Employer Tax-Identification (EIN) No(s), (if any): )  
 \_\_\_\_\_ )

**STATEMENT OF SOCIAL-SECURITY NUMBER(S)**

(or other Individual Taxpayer-Identification Number(s) (ITIN(s)))

1. Name of Debtor (Last, First, Middle): \_\_\_\_\_  
(Check the appropriate box and, if applicable, provide the required information.)

- ☐ Debtor has a Social-Security Number and it is: \_\_\_\_\_  
(If more than one, state all.)
- ☐ Debtor does not have a Social-Security Number but has an Individual Taxpayer-Identification Number (ITIN), and it is: \_\_\_\_\_  
(If more than one, state all.)
- ☐ Debtor does not have either a Social-Security Number or an Individual Taxpayer-Identification Number (ITIN).

2. Name of Joint Debtor (Last, First, Middle): \_\_\_\_\_  
(Check the appropriate box and, if applicable, provide the required information.)

- ☐ Joint Debtor has a Social-Security Number and it is: \_\_\_\_\_  
(If more than one, state all.)
- ☐ Joint Debtor does not have a Social-Security Number but has an Individual Taxpayer-Identification Number (ITIN) and it is: \_\_\_\_\_  
(If more than one, state all.)
- ☐ Joint Debtor does not have either a Social-Security Number or an Individual Taxpayer-Identification Number (ITIN).

I declare under penalty of perjury that the foregoing is true and correct.

X	_____	_____
	Signature of Debtor	Date
X	_____	_____
	Signature of Joint Debtor	Date

*\*Joint debtors must provide information for both spouses.*

*Penalty for making a false statement: Fine of up to \$250,000 or up to 5 years imprisonment or both. 18 U.S.C. §§ 152 and 3571.*

FORM B22A. Statement of Current Monthly Income and Means-Test Calculation (Chapter 7).

B 22A (Official Form 22A) (Chapter 7) (12/10)

In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

- ☐ The presumption arises.  
☐ The presumption does not arise.  
☐ The presumption is temporarily inapplicable.

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME  
AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by § 707(b)(2)(C).

Part I. MILITARY AND NON-CONSUMER DEBTORS

**1A Disabled Veterans.** If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

☐ **Declaration of Disabled Veteran.** By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).

**1B Non-consumer Debtors.** If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.

☐ **Declaration of non-consumer debts.** By checking this box, I declare that my debts are not primarily consumer debts.

**Reservists and National Guard Members; active duty or homeland defense activity.** Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the "exclusion period"). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for "The presumption is temporarily inapplicable" at the top of this statement, and (3) complete the verification in Part VIII. **During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.**

**1C Declaration of Reservists and National Guard Members.** By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard

- a. ☐ I was called to active duty after September 11, 2001, for a period of at least 90 days and  
☐ I remain on active duty /or/  
☐ I was released from active duty on \_\_\_\_\_, which is less than 540 days before this bankruptcy case was filed;

OR

- b. ☐ I am performing homeland defense activity for a period of at least 90 days /or/  
☐ I performed homeland defense activity for a period of at least 90 days, terminating on \_\_\_\_\_, which is less than 540 days before this bankruptcy case was filed.

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**Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION****Marital/filing status.** Check the box that applies and complete the balance of this part of this statement as directed.a. ☐ Unmarried. Complete only Column A ("Debtor's Income") for Lines 3-11.b. ☐ Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." Complete only Column A ("Debtor's Income") for Lines 3-11.c. ☐ Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.d. ☐ Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.

All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.

**Column A**  
**Debtor's**  
**Income****Column B**  
**Spouse's**  
**Income**3 **Gross wages, salary, tips, bonuses, overtime, commissions.**

\$

\$

4 **Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part V.

a.	Gross receipts	\$
b.	Ordinary and necessary business expenses	\$
c.	Business income	Subtract Line b from Line a

\$

\$

5 **Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part V.

a.	Gross receipts	\$
b.	Ordinary and necessary operating expenses	\$
c.	Rent and other real property income	Subtract Line b from Line a

\$

\$

6 **Interest, dividends and royalties.**

\$

\$

7 **Pension and retirement income.**

\$

\$

8 **Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.** Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B.

\$

\$

9 **Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:

Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____
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\$

\$



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10	<b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. <b>Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance.</b> Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. <table><tr><td>a.</td><td></td><td>\$</td></tr><tr><td>b.</td><td></td><td>\$</td></tr></table> Total and enter on Line 10	a.		\$	b.		\$	\$	\$
a.		\$							
b.		\$							
11	<b>Subtotal of Current Monthly Income for § 707(b)(7).</b> Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).	\$	\$						
12	<b>Total Current Monthly Income for § 707(b)(7).</b> If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.	\$							

**Part III. APPLICATION OF § 707(b)(7) EXCLUSION**

13	<b>Annualized Current Monthly Income for § 707(b)(7).</b> Multiply the amount from Line 12 by the number 12 and enter the result.	\$
14	<b>Applicable median family income.</b> Enter the median family income for the applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
15	<b>Application of Section 707(b)(7).</b> Check the applicable box and proceed as directed. <input type="checkbox"/> <b>The amount on Line 13 is less than or equal to the amount on Line 14.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. <input type="checkbox"/> <b>The amount on Line 13 is more than the amount on Line 14.</b> Complete the remaining parts of this statement.	

**Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)**

**Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)**

16	<b>Enter the amount from Line 12.</b>	\$									
17	<b>Marital adjustment.</b> If you checked the box at Line 2 c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2 c, enter zero. <table><tr><td>a.</td><td></td><td>\$</td></tr><tr><td>b.</td><td></td><td>\$</td></tr><tr><td>c.</td><td></td><td>\$</td></tr></table> Total and enter on Line 17.	a.		\$	b.		\$	c.		\$	\$
a.		\$									
b.		\$									
c.		\$									
18	<b>Current monthly income for § 707(b)(2).</b> Subtract Line 17 from Line 16 and enter the result.	\$									

Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19A	<b>National Standards: food, clothing and other items.</b> Enter in Line 19A the "Total" amount from IRS National Standards for Food, Clothing and Other Items for the applicable number of persons. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.				\$
19B	<b>National Standards: health care.</b> Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B.				\$
	<b>Persons under 65 years of age</b>		<b>Persons 65 years of age or older</b>		
	a1.	Allowance per person	a2.	Allowance per person	
	b1.	Number of persons	b2.	Number of persons	
	c1.	Subtotal	c2.	Subtotal	\$
20A	<b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court). The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.				\$
20B	<b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. <b>Do not enter an amount less than zero.</b>				\$
	a.	IRS Housing and Utilities Standards; mortgage/rental expense		\$	
	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42		\$	
	c.	Net mortgage/rental expense		Subtract Line b from Line a.	\$
21	<b>Local Standards: housing and utilities; adjustment.</b> If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:				\$

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22A	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8.</p> <p><input type="checkbox"/> 0   <input type="checkbox"/> 1   <input type="checkbox"/> 2 or more.</p> <p>If you checked 0, enter on Line 22A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
22B	<p><b>Local Standards: transportation; additional public transportation expense.</b> If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 22B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
23	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.)</p> <p><input type="checkbox"/> 1   <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. <b>Do not enter an amount less than zero.</b></p> <table><tr><td>a.</td><td>IRS Transportation Standards, Ownership Costs</td><td>\$</td></tr><tr><td>b.</td><td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td><td>\$</td></tr><tr><td>c.</td><td>Net ownership/lease expense for Vehicle 1</td><td>Subtract Line b from Line a.</td></tr></table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
24	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. <b>Do not enter an amount less than zero.</b></p> <table><tr><td>a.</td><td>IRS Transportation Standards, Ownership Costs</td><td>\$</td></tr><tr><td>b.</td><td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42</td><td>\$</td></tr><tr><td>c.</td><td>Net ownership/lease expense for Vehicle 2</td><td>Subtract Line b from Line a.</td></tr></table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
25	<p><b>Other Necessary Expenses: taxes.</b> Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. <b>Do not include real estate or sales taxes.</b></p>	\$									
26	<p><b>Other Necessary Expenses: involuntary deductions for employment.</b> Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as voluntary 401(k) contributions.</b></p>	\$									
27	<p><b>Other Necessary Expenses: life insurance.</b> Enter total average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b></p>	\$									
28	<p><b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. <b>Do not include payments on past due obligations included in Line 44.</b></p>	\$									



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29	<b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	\$
30	<b>Other Necessary Expenses: childcare.</b> Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. <b>Do not include other educational payments.</b>	\$
31	<b>Other Necessary Expenses: health care.</b> Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. <b>Do not include payments for health insurance or health savings accounts listed in Line 34.</b>	\$
32	<b>Other Necessary Expenses: telecommunication services.</b> Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. <b>Do not include any amount previously deducted.</b>	\$
33	<b>Total Expenses Allowed under IRS Standards.</b> Enter the total of Lines 19 through 32.	\$

**Subpart B: Additional Living Expense Deductions****Note: Do not include any expenses that you have listed in Lines 19-32**

34	<b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.		
	a.	Health Insurance	\$
	b.	Disability Insurance	\$
	c.	Health Savings Account	\$
	Total and enter on Line 34		\$
	<b>If you do not actually expend this total amount, state your actual total average monthly expenditures in the space below:</b> \$ _____		
35	<b>Continued contributions to the care of household or family members.</b> Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.		\$
36	<b>Protection against family violence.</b> Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.		\$
37	<b>Home energy costs.</b> Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities, that you actually expend for home energy costs. <b>You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.</b>		\$
38	<b>Education expenses for dependent children less than 18.</b> Enter the total average monthly expenses that you actually incur, not to exceed \$147.92* per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. <b>You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.</b>		\$

\*Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

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39	<b>Additional food and clothing expense.</b> Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at <a href="http://www.usdoj.gov/dst/">www.usdoj.gov/dst/</a> or from the clerk of the bankruptcy court.) <b>You must demonstrate that the additional amount claimed is reasonable and necessary.</b>	\$
40	<b>Continued charitable contributions.</b> Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).	\$
41	<b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 34 through 40	\$

Subpart C: Deductions for Debt Payment

42	<b>Future payments on secured claims.</b> For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 42.				\$
	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?	
a.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
b.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
c.			\$	<input type="checkbox"/> yes <input type="checkbox"/> no	
			Total: Add Lines a, b and c.		
43	<b>Other payments on secured claims.</b> If any of debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.				\$
	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount		
a.			\$		
b.			\$		
c.			\$		
			Total: Add Lines a, b and c		
44	<b>Payments on prepetition priority claims.</b> Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. <b>Do not include current obligations, such as those set out in Line 28.</b>				\$

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45	<b>Chapter 13 administrative expenses.</b> If you are eligible to file a case under chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;">Projected average monthly chapter 13 plan payment.</td> <td style="width: 40%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at <a href="http://www.usdoj.gov/usts/">www.usdoj.gov/usts/</a> or from the clerk of the bankruptcy court.)</td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Average monthly administrative expense of chapter 13 case</td> <td>Total: Multiply Lines a and b</td> </tr> </table>	a.	Projected average monthly chapter 13 plan payment.	\$	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at <a href="http://www.usdoj.gov/usts/">www.usdoj.gov/usts/</a> or from the clerk of the bankruptcy court.)	x	c.	Average monthly administrative expense of chapter 13 case	Total: Multiply Lines a and b	\$						
a.	Projected average monthly chapter 13 plan payment.	\$																
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at <a href="http://www.usdoj.gov/usts/">www.usdoj.gov/usts/</a> or from the clerk of the bankruptcy court.)	x																
c.	Average monthly administrative expense of chapter 13 case	Total: Multiply Lines a and b																
46	<b>Total Deductions for Debt Payment.</b> Enter the total of Lines 42 through 45.		\$															
<b>Subpart D: Total Deductions from Income</b>																		
47	<b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 33, 41, and 46.		\$															
<b>Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION</b>																		
48	<b>Enter the amount from Line 18 (Current monthly income for § 707(b)(2))</b>		\$															
49	<b>Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))</b>		\$															
50	<b>Monthly disposable income under § 707(b)(2).</b> Subtract Line 49 from Line 48 and enter the result		\$															
51	<b>60-month disposable income under § 707(b)(2).</b> Multiply the amount in Line 50 by the number 60 and enter the result.		\$															
52	<b>Initial presumption determination.</b> Check the applicable box and proceed as directed. <div style="margin-top: 5px;"> <input type="checkbox"/> <b>The amount on Line 51 is less than \$7,025*.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.         </div> <div style="margin-top: 5px;"> <input type="checkbox"/> <b>The amount set forth on Line 51 is more than \$11,725*.</b> Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.         </div> <div style="margin-top: 5px;"> <input type="checkbox"/> <b>The amount on Line 51 is at least \$7,025*, but not more than \$11,725*.</b> Complete the remainder of Part VI (Lines 53 through 55).         </div>																	
53	<b>Enter the amount of your total non-priority unsecured debt</b>		\$															
54	<b>Threshold debt payment amount.</b> Multiply the amount in Line 53 by the number 0.25 and enter the result.		\$															
55	<b>Secondary presumption determination.</b> Check the applicable box and proceed as directed. <div style="margin-top: 5px;"> <input type="checkbox"/> <b>The amount on Line 51 is less than the amount on Line 54.</b> Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.         </div> <div style="margin-top: 5px;"> <input type="checkbox"/> <b>The amount on Line 51 is equal to or greater than the amount on Line 54.</b> Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.         </div>																	
<b>Part VII: ADDITIONAL EXPENSE CLAIMS</b>																		
56	<b>Other Expenses.</b> List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.																	
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 55%;">Expense Description</th> <th style="width: 40%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">a.</td> <td></td> <td>\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td></td> <td>\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b and c</td> <td>\$</td> </tr> </tbody> </table>			Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b and c		\$	
	Expense Description	Monthly Amount																
a.		\$																
b.		\$																
c.		\$																
Total: Add Lines a, b and c		\$																

\*Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment



Part VIII: VERIFICATION	
57	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this is a joint case, both debtors must sign.)</i>
	Date: _____ Signature: _____
	<div>(Debtor)</div>
	Date: _____ Signature: _____
	<div>(Joint Debtor, if any)</div>

FORM B22B. Statement of Current Monthly Income (Chapter 11).

B 22B (Official Form 22B) (Chapter 11) (12/10)

In re \_\_\_\_\_  
Debtor(s)

Case Number: \_\_\_\_\_  
(If known)

CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME

In addition to Schedules I and J, this statement must be completed by every individual chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME					
1	<b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10. c. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.				
	All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.			Column A Debtor's Income	Column B Spouse's Income
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$
3	Net income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero.				
	a.	Gross receipts	\$		
	b.	Ordinary and necessary business expenses	\$		
	c.	Business income	Subtract Line b from Line a.	\$	\$
4	Net rental and other real property income. Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero.				
	a.	Gross receipts	\$		
	b.	Ordinary and necessary operating expenses	\$		
	c.	Rent and other real property income	Subtract Line b from Line a.	\$	\$
5	Interest, dividends, and royalties.			\$	\$
6	Pension and retirement income.			\$	\$
7	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse if Column B is completed. Each regular payment should be reported in only one column: if a payment is listed in Column A, do not report that payment in Column B.			\$	\$
8	Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:				
	Unemployment compensation claimed to be a benefit under the Social Security Act		Debtor \$ _____ Spouse \$ _____	\$	\$

B 22B (Official Form 22B) (Chapter 11) (12/10)

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9	<b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</b>		
	a.		\$
	b.		\$
10	<b>Subtotal of current monthly income.</b> Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	\$	\$
11	<b>Total current monthly income.</b> If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$	
<b>Part 11: VERIFICATION</b>			
12	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i>		
	Date: _____	Signature: _____	(Debtor)
	Date: _____	Signature: _____	(Joint Debtor, if any)



# **FORM B22C. Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Chapter 13).**

B 22C (Official Form 22C) (Chapter 13) (12/10)

In re \_\_\_\_\_  
Debtor(s)Case Number: \_\_\_\_\_  
(If known)

According to the calculations required by this statement:

- ☐ The applicable commitment period is 3 years.  
☐ The applicable commitment period is 5 years.  
☐ Disposable income is determined under § 1325(b)(3).  
☐ Disposable income is not determined under § 1325(b)(3).  
 (Check the boxes as directed in Lines 17 and 23 of this statement.)

## **CHAPTER 13 STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME**

In addition to Schedules I and J, this statement must be completed by every individual chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME				Column A Debtor's Income	Column B Spouse's Income									
1	<b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.													
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$									
3	<b>Income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 3. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%;"> <tr> <td>a.</td> <td>Gross receipts</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary business expenses	\$												
c.	Business income	Subtract Line b from Line a												
4	<b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%;"> <tr> <td>a.</td> <td>Gross receipts</td> <td>\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Rent and other real property income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rent and other real property income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rent and other real property income	Subtract Line b from Line a												
5	Interest, dividends, and royalties.			\$	\$									
6	Pension and retirement income.			\$	\$									
7	Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose. Do not include alimony or separate maintenance payments or amounts paid by the debtor's spouse. Each regular payment should be reported in only one column: if a payment is listed in Column A, do not report that payment in Column B.			\$	\$									

B 22C (Official Form 22C) (Chapter 13) (12/10)

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8	<b>Unemployment compensation.</b> Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: <table><tr><td>Unemployment compensation claimed to be a benefit under the Social Security Act</td><td>Debtor \$ _____</td><td>Spouse \$ _____</td><td>\$ _____</td><td>\$ _____</td></tr></table>	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$ _____	\$ _____		
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$ _____	\$ _____				
9	<b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include alimony or separate maintenance payments paid by your spouse, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. <table><tr><td>a.</td><td>_____</td><td>\$ _____</td></tr><tr><td>b.</td><td>_____</td><td>\$ _____</td></tr></table>	a.	_____	\$ _____	b.	_____	\$ _____	\$ _____ \$ _____
a.	_____	\$ _____						
b.	_____	\$ _____						
10	<b>Subtotal.</b> Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).	\$ _____ \$ _____						
11	<b>Total.</b> If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.	\$ _____						

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	<b>Enter the amount from Line 11.</b>	\$ _____									
13	<b>Marital adjustment.</b> If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter on Line 13 the amount of the income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of you or your dependents and specify, in the lines below, the basis for excluding this income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero. <table><tr><td>a.</td><td>_____</td><td>\$ _____</td></tr><tr><td>b.</td><td>_____</td><td>\$ _____</td></tr><tr><td>c.</td><td>_____</td><td>\$ _____</td></tr></table> Total and enter on Line 13.	a.	_____	\$ _____	b.	_____	\$ _____	c.	_____	\$ _____	\$ _____
a.	_____	\$ _____									
b.	_____	\$ _____									
c.	_____	\$ _____									
14	<b>Subtract Line 13 from Line 12 and enter the result.</b>	\$ _____									
15	<b>Annualized current monthly income for § 1325(b)(4).</b> Multiply the amount from Line 14 by the number 12 and enter the result.	\$ _____									
16	<b>Applicable median family income.</b> Enter the median family income for applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$ _____									
17	<b>Application of § 1325(b)(4).</b> Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 15 is less than the amount on Line 16. Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and continue with this statement. <input type="checkbox"/> The amount on Line 15 is not less than the amount on Line 16. Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with this statement.										

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

18	<b>Enter the amount from Line 11.</b>	\$ _____
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19	<p><b>Marital adjustment.</b> If you are married, but are not filing jointly with your spouse, enter on Line 19 the total of any income listed in Line 10, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If the conditions for entering this adjustment do not apply, enter zero.</p> <table><tr><td>a.</td><td></td><td>\$</td></tr><tr><td>b.</td><td></td><td>\$</td></tr><tr><td>c.</td><td></td><td>\$</td></tr></table> <p>Total and enter on Line 19.</p>	a.		\$	b.		\$	c.		\$	\$							
a.		\$																
b.		\$																
c.		\$																
20	<p><b>Current monthly income for § 1325(b)(3).</b> Subtract Line 19 from Line 18 and enter the result.</p>	\$																
21	<p><b>Annualized current monthly income for § 1325(b)(3).</b> Multiply the amount from Line 20 by the number 12 and enter the result.</p>	\$																
22	<p><b>Applicable median family income.</b> Enter the amount from Line 16.</p>	\$																
23	<p><b>Application of § 1325(b)(3).</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 21 is more than the amount on Line 22.</b> Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement.</p> <p><input type="checkbox"/> <b>The amount on Line 21 is not more than the amount on Line 22.</b> Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. <b>Do not complete Parts IV, V, or VI.</b></p>																	
<p><b>Part IV. CALCULATION OF DEDUCTIONS FROM INCOME</b></p>																		
<p><b>Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)</b></p>																		
24A	<p><b>National Standards: food, apparel and services, housekeeping supplies, personal care, and miscellaneous.</b> Enter in Line 24A the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable number of persons. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) The applicable number of persons is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																
24B	<p><b>National Standards: health care.</b> Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply Line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 24B.</p> <table><tr><th colspan="2">Persons under 65 years of age</th><th colspan="2">Persons 65 years of age or older</th></tr><tr><td>a1.</td><td>Allowance per person</td><td>a2.</td><td>Allowance per person</td></tr><tr><td>b1.</td><td>Number of persons</td><td>b2.</td><td>Number of persons</td></tr><tr><td>c1.</td><td>Subtotal</td><td>c2.</td><td>Subtotal</td></tr></table>	Persons under 65 years of age		Persons 65 years of age or older		a1.	Allowance per person	a2.	Allowance per person	b1.	Number of persons	b2.	Number of persons	c1.	Subtotal	c2.	Subtotal	\$
Persons under 65 years of age		Persons 65 years of age or older																
a1.	Allowance per person	a2.	Allowance per person															
b1.	Number of persons	b2.	Number of persons															
c1.	Subtotal	c2.	Subtotal															
25A	<p><b>Local Standards: housing and utilities; non-mortgage expenses.</b> Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$																



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25B	<p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. <b>Do not enter an amount less than zero.</b></p> <table><tr><td>a.</td><td>IRS Housing and Utilities Standards; mortgage/rent expense</td><td>\$</td></tr><tr><td>b.</td><td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td><td>\$</td></tr><tr><td>c.</td><td>Net mortgage/rental expense</td><td>Subtract Line b from Line a.</td></tr></table>	a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rent expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
26	<p><b>Local Standards: housing and utilities; adjustment.</b> If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	\$									
27A	<p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>If you checked 0, enter on Line 27A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 27A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
27B	<p><b>Local Standards: transportation; additional public transportation expense.</b> If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 27B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>	\$									
28	<p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. <b>Do not enter an amount less than zero.</b></p> <table><tr><td>a.</td><td>IRS Transportation Standards, Ownership Costs</td><td>\$</td></tr><tr><td>b.</td><td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td><td>\$</td></tr><tr><td>c.</td><td>Net ownership/lease expense for Vehicle 1</td><td>Subtract Line b from Line a.</td></tr></table>	a.	IRS Transportation Standards, Ownership Costs	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									

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29	<b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> Complete this Line only if you checked the "2 or more" Box in Line 28. Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. <b>Do not enter an amount less than zero.</b>	
	a. IRS Transportation Standards, Ownership Costs	\$
	b. Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$
	c. Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.
		\$
30	<b>Other Necessary Expenses: taxes.</b> Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self-employment taxes, social-security taxes, and Medicare taxes. <b>Do not include real estate or sales taxes.</b>	\$
31	<b>Other Necessary Expenses: involuntary deductions for employment.</b> Enter the total average monthly deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as voluntary 401(k) contributions.</b>	\$
32	<b>Other Necessary Expenses: life insurance.</b> Enter total average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>	\$
33	<b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. <b>Do not include payments on past due obligations included in Line 49.</b>	\$
34	<b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	\$
35	<b>Other Necessary Expenses: childcare.</b> Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. <b>Do not include other educational payments.</b>	\$
36	<b>Other Necessary Expenses: health care.</b> Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 24B. <b>Do not include payments for health insurance or health savings accounts listed in Line 39.</b>	\$
37	<b>Other Necessary Expenses: telecommunication services.</b> Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. <b>Do not include any amount previously deducted.</b>	\$
38	<b>Total Expenses Allowed under IRS Standards.</b> Enter the total of Lines 24 through 37.	\$
<b>Subpart B: Additional Living Expense Deductions</b>		
<b>Note: Do not include any expenses that you have listed in Lines 24-37</b>		

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**Health Insurance, Disability Insurance, and Health Savings Account Expenses.** List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.

a.	Health Insurance	\$
b.	Disability Insurance	\$
c.	Health Savings Account	\$

Total and enter on Line 39

\$

**If you do not actually expend this total amount,** state your actual total average monthly expenditures in the space below:

\$

**Continued contributions to the care of household or family members.** Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. **Do not include payments listed in Line 34.**

\$

**Protection against family violence.** Enter the total average reasonably necessary monthly expenses that you actually incur to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.

\$

**Home energy costs.** Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities that you actually expend for home energy costs. **You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.**

\$

**Education expenses for dependent children under 18.** Enter the total average monthly expenses that you actually incur, not to exceed \$147.92 per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. **You must provide your case trustee with documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.**

\$

**Additional food and clothing expense.** Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at [www.usdoj.gov/ust/](http://www.usdoj.gov/ust/) or from the clerk of the bankruptcy court.) **You must demonstrate that the additional amount claimed is reasonable and necessary.**

\$

**Charitable contributions.** Enter the amount reasonably necessary for you to expend each month on charitable contributions in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2). **Do not include any amount in excess of 15% of your gross monthly income.**

\$

**Total Additional Expense Deductions under § 707(b).** Enter the total of Lines 39 through 45.

\$

**Subpart C: Deductions for Debt Payment**

**Future payments on secured claims.** For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total of the Average Monthly Payments on Line 47.

Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?
a.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
b.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
c.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no
		Total: Add Lines a, b, and c	

\$



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48

**Other payments on secured claims.** If any of debts listed in Line 47 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 47, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.

	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount
a.			\$
b.			\$
c.			\$
			Total: Add Lines a, b, and c

\$

49

**Payments on prepetition priority claims.** Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. Do not include current obligations, such as those set out in Line 33.

\$

50

**Chapter 13 administrative expenses.** Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.

a.	Projected average monthly chapter 13 plan payment.	\$
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)	x
c.	Average monthly administrative expense of chapter 13 case	Total: Multiply Lines a and b

\$

51

**Total Deductions for Debt Payment.** Enter the total of Lines 47 through 50.

\$

#### Subpart D: Total Deductions from Income

52

**Total of all deductions from income.** Enter the total of Lines 38, 46, and 51.

\$

#### Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

53

**Total current monthly income.** Enter the amount from Line 20.

\$

54

**Support income.** Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, reported in Part I, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.

\$

55

**Qualified retirement deductions.** Enter the monthly total of (a) all amounts withheld by your employer from wages as contributions for qualified retirement plans, as specified in § 541(b)(7) and (b) all required repayments of loans from retirement plans, as specified in § 362(b)(19).

\$

56

**Total of all deductions allowed under § 707(b)(2).** Enter the amount from Line 52.

\$

57

**Deduction for special circumstances.** If there are special circumstances that justify additional expenses for which there is no reasonable alternative, describe the special circumstances and the resulting expenses in lines a-c below. If necessary, list additional entries on a separate page. Total the expenses and enter the total in Line 57. You must provide your case trustee with documentation of these expenses and you must provide a detailed explanation of the special circumstances that make such expenses necessary and reasonable.

	Nature of special circumstances	Amount of expense
a.		\$
b.		\$
c.		\$
		Total: Add Lines a, b, and c

\$

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58	Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, 56, and 57 and enter the result.	\$
59	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 58 from Line 53 and enter the result.	\$

Part VI: ADDITIONAL EXPENSE CLAIMS

60	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.	
	Expense Description	Monthly Amount
	a.	\$
	b.	\$
	c.	\$
Total: Add Lines a, b, and c		\$

Part VII: VERIFICATION

61	I declare under penalty of perjury that the information provided in this statement is true and correct. (If this is a joint case, both debtors must sign.)	
	Date: _____	Signature: _____ (Debtor)
	Date: _____	Signature: _____ (Joint Debtor, if any)

**FORM B23. Debtor's Certification of Completion of Instructional Course Concerning Financial Management.**

B 23 (Official Form 23) (12/10)

**UNITED STATES BANKRUPTCY COURT**

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Chapter \_\_\_\_\_

**DEBTOR'S CERTIFICATION OF COMPLETION OF POSTPETITION INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT**

*Every individual debtor in a chapter 7, chapter 11 in which § 1141(d)(3) applies, or chapter 13 case must file this certification. If a joint petition is filed, each spouse must complete and file a separate certification. Complete one of the following statements and file by the deadline stated below:*

☐ I, \_\_\_\_\_, the debtor in the above-styled case, hereby  
(Printed Name of Debtor)  
certify that on \_\_\_\_\_ (Date), I completed an instructional course in personal financial management  
provided by \_\_\_\_\_, an approved personal financial  
(Name of Provider)  
management provider.

Certificate No. (if any): \_\_\_\_\_.

☐ I, \_\_\_\_\_, the debtor in the above-styled case, hereby  
(Printed Name of Debtor)  
certify that no personal financial management course is required because of [Check the appropriate box.]:

- ☐ Incapacity or disability, as defined in 11 U.S.C. § 109(h);
- ☐ Active military duty in a military combat zone; or
- ☐ Residence in a district in which the United States trustee (or bankruptcy administrator) has determined that the approved instructional courses are not adequate at this time to serve the additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: \_\_\_\_\_

Date: \_\_\_\_\_

*Instructions:* Use this form only to certify whether you completed a course in personal financial management. (Fed. R. Bankr. P. 1007(b)(7).) Do NOT use this form to file the certificate given to you by your prepetition credit counseling provider and do NOT include with the petition when filing your case.

*Filing Deadlines:* In a chapter 7 case, file within 60 days of the first date set for the meeting of creditors under § 341 of the Bankruptcy Code. In a chapter 11 or 13 case, file no later than the last payment made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. (See Fed. R. Bankr. P. 1007(c).)



**FORM B24. Certification to Court of Appeals.**

Official Form 24 (12/08)

**[Caption as described in Fed. R. Bankr. P. 7010 or 9004(b), as applicable.]****CERTIFICATION TO COURT OF APPEALS  
BY ALL PARTIES**

A notice of appeal having been filed in the above-styled matter on \_\_\_\_\_ [Date], \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, [Names of all the appellants and all the appellees, if any], who are all the appellants [and all the appellees] hereby certify to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter ☐ is ☐ is not required under 28 U.S.C. § 158(a).

[If from a final judgment, order, or decree] This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the \_\_\_\_\_ District of \_\_\_\_\_ entered on \_\_\_\_\_ [Date].

[If from an interlocutory order or decree] This certification arises in an appeal from an interlocutory order or decree, and the parties hereby request leave to appeal as required by 28 U.S.C. § 158(a).

*[The certification shall contain one or more of the following statements, as is appropriate to the circumstances.]*

The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States, or involves a matter of public importance.

*Or*

The judgment, order, or decree involves a question of law requiring resolution of conflicting decisions.

*Or*

An immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken.

Official Form 24 (12/08) - Cont.

Page 2

*[The parties may include or attach the information specified in Rule 8001(f)(3)(C).]*

Signed: *[If there are more than two signatories, all must sign and provide the information requested below. Attach additional signed sheets if needed.]*

\_\_\_\_\_  
Attorney for Appellant (or Appellant,  
if not represented by an attorney)

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney for Appellant (or Appellant  
if not represented by an attorney)

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Date

FORM B25A. Official Form 25A.

B25A (Official Form 25A) (12/11)

United States Bankruptcy Court

\_\_\_\_\_ District of \_\_\_\_\_

In re \_\_\_\_\_,  
Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

[NAME OF PROPONENT]'S PLAN OF REORGANIZATION, DATED [INSERT DATE]

ARTICLE I  
SUMMARY

This Plan of Reorganization (the “Plan”) under chapter 11 of the Bankruptcy Code (the “Code”) proposes to pay creditors of [insert the name of the debtor] (the “Debtor”) from [specify sources of payment, such as an infusion of capital, loan proceeds, sale of assets, cash flow from operations, or future income].

This Plan provides for \_\_\_\_\_ classes of secured claims; \_\_\_\_\_ classes of unsecured claims; and \_\_\_\_\_ classes of equity security holders. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately \_\_\_\_ cents on the dollar. This Plan also provides for the payment of administrative and priority claims [if payment is not in full on the effective date of this Plan with respect to any such claim (to the extent permitted by the Code or the claimant’s agreement), identify such claim and briefly summarize the proposed treatment.]

All creditors and equity security holders should refer to Articles III through VI of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)**

ARTICLE II  
CLASSIFICATION OF CLAIMS AND INTERESTS

- 2.01    Class 1.        All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), [“gap” period claims in an involuntary case under § 507(a)(3),] and priority tax claims under § 507(a)(8)).
- 2.02    Class 2.        The claim of \_\_\_\_\_, to the extent allowed as a secured claim under § 506 of the Code.



B25A (Official Form 25A) (12/11) - Cont.

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[Add other classes of secured creditors, if any. Note: Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8).]

- 2.03 Class 3. All unsecured claims allowed under § 502 of the Code.

[Add other classes of unsecured claims, if any.]

- 2.04 Class 4. Equity interests of the Debtor. [If the Debtor is an individual, change this heading to "The interests of the individual Debtor in property of the estate."]

### ARTICLE III

#### **TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS**

3.01 Unclassified Claims. Under section §1123(a)(1), administrative expense claims, ["gap" period claims in an involuntary case allowed under § 502(f) of the Code,] and priority tax claims are not in classes.

3.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code [, and a "gap" claim in an involuntary case allowed under § 502(f) of the Code,] will be paid in full on the effective date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor.

3.03 Priority Tax Claims. Each holder of a priority tax claim will be paid [specify terms of treatment consistent with § 1129(a)(9)(C) of the Code].

3.04 United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

### ARTICLE IV

#### **TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN**

- 4.01 Claims and interests shall be treated as follows under this Plan:

B25A (Official Form 25A) (12/11) - Cont.

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Class	Impairment	Treatment
Class 1 - Priority Claims	[State whether impaired or unimpaired.]	[Insert treatment of priority claims in this Class, including the form, amount and timing of distribution, if any. For example: "Class 1 is unimpaired by this Plan, and each holder of a Class 1 Priority Claim will be paid in full, in cash, upon the later of the effective date of this Plan as defined in Article VII, or the date on which such claim is allowed by a final non-appealable order. Except: _____."]
Class 2 – Secured Claim of [Insert name of secured creditor.]	[State whether impaired or unimpaired.]	[Insert treatment of secured claim in this Class, including the form, amount and timing of distribution, if any.] [Add class[es] of secured claims if applicable]
Class 3 - General Unsecured Creditors	[State whether impaired or unimpaired.]	[Insert treatment of unsecured creditors in this Class, including the form, amount and timing of distribution, if any.] [Add administrative convenience class if applicable]
Class 4 - Equity Security Holders of the Debtor	[State whether impaired or unimpaired.]	[Insert treatment of equity security holders in this Class, including the form, amount and timing of distribution, if any.]

ARTICLE V  
ALLOWANCE AND DISALLOWANCE OF CLAIMS

5.01 Disputed Claim. A disputed claim is a claim that has not been allowed or disallowed [by a final non-appealable order], and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on account of a disputed claim unless such claim is allowed [by a final non-appealable order].

5.03 Settlement of Disputed Claims. The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

B25A (Official Form 25A) (12/11) - Cont.

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**ARTICLE VI**  
**PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

6.01 Assumed Executory Contracts and Unexpired Leases.

(a) The Debtor assumes the following executory contracts and/or unexpired leases effective upon the [Insert "effective date of this Plan as provided in Article VII," "the date of the entry of the order confirming this Plan," or other applicable date]:

[List assumed executory contracts and/or unexpired leases.]

(b) The Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 6.01(a) above, or before the date of the order confirming this Plan, upon the [Insert "effective date of this Plan," "the date of the entry of the order confirming this Plan," or other applicable date]. A proof of a claim arising from the rejection of an executory contract or unexpired lease under this section must be filed no later than \_\_\_\_\_ ( ) days after the date of the order confirming this Plan.

**ARTICLE VII**  
**MEANS FOR IMPLEMENTATION OF THE PLAN**

[Insert here provisions regarding how the plan will be implemented as required under §1123(a)(5) of the Code. For example, provisions may include those that set out how the plan will be funded, as well as who will be serving as directors, officers or voting trustees of the reorganized debtor.]

**ARTICLE VIII**  
**GENERAL PROVISIONS**

8.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Code shall apply when terms defined or construed in the Code are used in this Plan, and they are supplemented by the following definitions: [Insert additional definitions if necessary].

8.02 Effective Date of Plan. The effective date of this Plan is the first business day following the date that is fourteen days after the entry of the order of confirmation. If, however, a stay of the confirmation order is in effect on that date, the effective date will be the first business day after the date on which the stay of the confirmation order expires or is otherwise terminated.



B25A (Official Form 25A) (12/11) - Cont.

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8.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

8.06 Controlling Effect. Unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of \_\_\_\_\_ govern this Plan and any agreements, documents, and instruments executed in connection with this Plan, except as otherwise provided in this Plan.]

8.07 Corporate Governance. [If the Debtor is a corporation include provisions required by § 1123(a)(6) of the Code.]]

## **ARTICLE IX**

### **DISCHARGE**

[If the Debtor is not entitled to discharge under 11 U.S.C. § 1141(d)(3) change this heading to  
"NO DISCHARGE OF DEBTOR."]

**9.01. [Option 1 -- If Debtor is an individual and § 1141(d)(3) is not applicable]**

Discharge. Confirmation of this Plan does not discharge any debt provided for in this Plan until the court grants a discharge on completion of all payments under this Plan, or as otherwise provided in § 1141(d)(5) of the Code. The Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**[Option 2 -- If the Debtor is a partnership and section 1141(d)(3) of the Code is not applicable]**

Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. The Debtor will not be discharged from any debt imposed by this Plan.

B25A (Official Form 25A) (12/11) - Cont.

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**[Option 3 -- If the Debtor is a corporation and § 1141(d)(3) is not applicable]**

Discharge. On the confirmation date of this Plan, the debtor will be discharged from any debt that arose before confirmation of this Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor will not be discharged of any debt: (i) imposed by this Plan; (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure; or (iii) of a kind specified in § 1141(d)(6)(B).

**[Option 4 – If § 1141(d)(3) is applicable]**

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

**ARTICLE X**  
**OTHER PROVISIONS**

**[Insert other provisions, as applicable.]**

Respectfully submitted,

By: \_\_\_\_\_  
The Plan Proponent

By: \_\_\_\_\_  
Attorney for the Plan Proponent

**FORM B25B. Official Form 25B.**

**Official Form 25B (12/08)**

**United States Bankruptcy Court**

District of \_\_\_\_\_

In re \_\_\_\_\_

Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**[NAME OF PLAN PROPONENT]'S DISCLOSURE STATEMENT, DATED [INSERT DATE]**

***Table of Contents***

[Insert when text is finalized]



Official Form 25B (12/08) – Cont.

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**I. INTRODUCTION**

This is the disclosure statement (the “Disclosure Statement”) in the small business chapter 11 case of \_\_\_\_\_ (the “Debtor”). This Disclosure Statement contains information about the Debtor and describes the [insert name of plan] (the “Plan”) filed by [the Debtor] on [insert date]. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. *Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

The proposed distributions under the Plan are discussed at pages \_\_\_\_-\_\_\_\_ of this Disclosure Statement. [General unsecured creditors are classified in Class \_\_\_\_, and will receive a distribution of \_\_\_\_ % of their allowed claims, to be distributed as follows \_\_\_\_\_.]

**A. Purpose of This Document**

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why [the Proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

**B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to [Finally Approve This Disclosure Statement and] Confirm the Plan*

Official Form 25B (12/08) – Cont.

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The hearing at which the Court will determine whether to [finally approve this Disclosure Statement and] confirm the Plan will take place on [insert date], at [insert time], in Courtroom \_\_\_\_\_, at the [Insert Courthouse Name, and Full Court Address, City, State, Zip Code].

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to [insert address]. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by [insert date] or it will not be counted.

3. *Deadline For Objecting to the [Adequacy of Disclosure and] Confirmation of the Plan*

Objections to [this Disclosure Statement or to] the confirmation of the Plan must be filed with the Court and served upon [insert entities] by [insert date].

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact [insert name and address of representative of plan proponent].

C. **Disclaimer**

*The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. [The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until \_\_\_\_\_.]*

II. **BACKGROUND**

A. **Description and History of the Debtor's Business**

The Debtor is a [corporation, partnership, etc.]. Since [insert year operations commenced], the Debtor has been in the business of \_\_\_\_\_. [Describe the Debtor's business].

B. **Insiders of the Debtor**

Official Form 25B (12/08) – Cont.

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[Insert a detailed list of the names of Debtor's insiders as defined in §101(31) of the United States Bankruptcy Code (the "Code") and their relationship to the Debtor. For each insider, list all compensation paid by the Debtor or its affiliates to that person or entity during the two years prior to the commencement of the Debtor's bankruptcy case, as well as compensation paid during the pendency of this chapter 11 case.]

**C. Management of the Debtor Before and During the Bankruptcy**

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the "Managers") were [List the Managers of the Debtor prior to the petition date].

The Managers of the Debtor during the Debtor's chapter 11 case have been: [List Managers of the Debtor during the Debtor's chapter 11 case.]

After the effective date of the order confirming the Plan, the directors, officers, and voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the "Post Confirmation Managers"), will be: [List Post Confirmation Managers of the Debtor.] The responsibilities and compensation of these Post Confirmation Managers are described in section \_\_ of this Disclosure Statement.

**D. Events Leading to Chapter 11 Filing**

[Describe the events that led to the commencement of the Debtor's bankruptcy case.]

**E. Significant Events During the Bankruptcy Case**

[Describe significant events during the Debtor's bankruptcy case:

- Describe any asset sales outside the ordinary course of business, debtor in possession financing, or cash collateral orders.
- Identify the professionals approved by the court.
- Describe any adversary proceedings that have been filed or other significant litigation that has occurred (including contested claim disallowance proceedings), and any other significant legal or administrative proceedings that are pending or have been pending during the case in a forum other than the Court.
- Describe any steps taken to improve operations and profitability of the Debtor.
- Describe other events as appropriate.]



Official Form 25B (12/08) – Cont.

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**F. Projected Recovery of Avoidable Transfers [Choose the option that applies]**

**[Option 1 – If the Debtor does not intend to pursue avoidance actions]**

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

**[Option 2 – If the Debtor intends to pursue avoidance actions]**

The Debtor estimates that up to \$ \_\_\_\_\_ may be realized from the recovery of fraudulent, preferential or other avoidable transfers. While the results of litigation cannot be predicted with certainty and it is possible that other causes of action may be identified, the following is a summary of the preference, fraudulent conveyance and other avoidance actions filed or expected to be filed in this case:

Transaction	Defendant	Avoidance Action

**[Option 3 – If the Debtor does not yet know whether it intends to pursue avoidance actions]**

The Debtor has not yet completed its investigation with regard to prepetition transactions. If you received a payment or other transfer within 90 days of the bankruptcy, or other transfer avoidable under the Code, the Debtor may seek to avoid such transfer.

**G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

**H. Current and Historical Financial Conditions**

The identity and fair market value of the estate's assets are listed in Exhibit B. [Identify source and basis of valuation.]

The Debtor's most recent financial statements [if any] issued before bankruptcy, each of which was filed with the Court, are set forth in Exhibit C.

[The most recent post-petition operating report filed since the commencement of the Debtor’s bankruptcy case are set forth in Exhibit D.] [A summary of the Debtor’s periodic operating reports filed since the commencement of the Debtor’s bankruptcy case is set forth in Exhibit D.]

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

1. Administrative Expenses

Administrative expenses are costs or expenses of administering the Debtor’s chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor’s estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the		Paid in full on the effective date of the Plan, or according to terms of obligation if later

Petition Date		
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court.		Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk's Office Fees		Paid in full on the effective date of the Plan
Other administrative expenses		Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees		Paid in full on the effective date of the Plan

2. Priority Tax Claims

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Debtors Claims and type of tax	Estimated Amount Owed	Order of Assessment	Treatment
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount = \$
			Pmt interval = [Monthly] payment = Begin date =



Description (Name and type of tax)	Estimated Amount Owed	Date of Assessment	Payment
			End date =
			Interest Rate % =
			Total Payout Amount = \$

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. Classes of Secured Claims

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will [be classified as a general unsecured claim].

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Class #	Description	Insider (Yes or No)	Impairment	Treatment
	Secured claim of: Name =		[State whether impaired or unimpaired]	[Monthly] Pmt =
	Collateral description =			Pmts Begin =
	Allowed Secured Amount = \$ _____			Pmts End =
	Priority of lien =			[Balloon pmt] =
	Principal owed = \$ _____			Interest rate % =
	Pre-pet. arrearage = \$ _____			Treatment of Lien =
	Total claim = \$ _____			[Additional payment required to cure defaults] =

<div>Secured claim of: Name =</div> <div>Collateral description =</div> <div>Allowed Secured Amount = \$</div> <div>Priority of lien =</div> <div>Principal owed = \$</div> <div>Pre-pet. arrearage = \$</div> <div>Total claim = \$</div>		<div>{State whether impaired or unimpaired}</div>	<div>Monthly Pmt =</div> <div>Pmts Begin =</div> <div>Pmts End =</div> <div>[Balloon pmt] =</div> <div>Interest rate % =</div> <div>Treatment of Lien =</div> <div>[Additional payment required to cure defaults] =</div>
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2. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class	Description	Impairment	Treatment
	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	
	Priority unsecured claim pursuant to Section [insert]  Total amt of claims = \$	[State whether impaired or unimpaired]	

3.      *Class[es] of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code. [Insert description of §1122(b) convenience class if applicable.]

The following chart identifies the Plan's proposed treatment of Class[es] \_\_ through \_\_, which contain general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
	[1122(b) Convenience Class]	[State whether impaired or unimpaired]	[Insert proposed treatment, such as "Paid in full in cash on effective date of the Plan or when due under contract or applicable nonbankruptcy law"]
	General Unsecured Class	[State whether impaired or unimpaired]	Monthly Pmt = Pmts Begin = Pmts End = [Balloon pmt] = Interest rate % from [date] = Estimated percent of claim paid =

4.      *Class[es] of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan's proposed treatment of the class[es] of equity interest holders: [There may be more than one class of equity interests in, for example, a partnership case, or a case where the prepetition debtor had issued multiple classes of stock.]



Class #	Description	Impairment	Treatment
	Equity interest holders	[State whether impaired or unimpaired]	

**D. Means of Implementing the Plan**

**1. Source of Payments**

Payments and distributions under the Plan will be funded by the following:

[Describe the source of funds for payments under the Plan.]

**2. Post-confirmation Management**

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or no)	Position	Compensation

**E. Risk Factors**

The proposed Plan has the following risks:

[List all risk factors that might affect the Debtor’s ability to make payments and other distributions required under the Plan.]

**F. Executory Contracts and Unexpired Leases**

The Plan, in Exhibit 5.1, lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the

type that must be cured under the Code, if any. Exhibit 5.1 also lists how the Debtor will cure and compensate the other party to such contract or lease for any such defaults.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Exhibit 5.1 will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

**[The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is \_\_\_\_\_. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.]**

#### **G. Tax Consequences of Plan**

***Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.***

The following are the anticipated tax consequences of the Plan: [List the following general consequences as a minimum: (1) Tax consequences to the Debtor of the Plan; (2) General tax consequences on creditors of any discharge, and the general tax consequences of receipt of plan consideration after confirmation.]

#### **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

**A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes \_\_\_\_\_ are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes \_\_\_\_\_ are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

**1. What Is an Allowed Claim or an Allowed Equity Interest?**

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

*The deadline for filing a proof of claim in this case was \_\_\_\_\_.  
[If applicable – The deadline for filing objections to claims is \_\_\_\_\_.]*

**2. What Is an Impaired Claim or Impaired Equity Interest?**

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

**3. Who is Not Entitled to Vote**

The holders of the following five types of claims and equity interests are *not* entitled to vote:



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- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan [and to the Adequacy of the Disclosure Statement].***

**4. Who Can Vote in More Than One Class**

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

**B. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes, as discussed later in Section [B.2.].

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

*You should consult your own attorney if a "cramdown" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.*

C. **Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit E.

D. **Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit F.

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2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit G.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$ \_\_\_\_\_. The final Plan payment is expected to be paid on \_\_\_\_\_.

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

*You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.*

V. **EFFECT OF CONFIRMATION OF PLAN**

A. **DISCHARGE OF DEBTOR** [If the Debtor is not entitled to discharge pursuant to 11 U.S.C. § 1141(d)(3) change this heading to "NO DISCHARGE OF DEBTOR."]

**[Option 1 – If Debtor is an individual and § 1141(d)(3) is not applicable]**

Discharge. Confirmation of the Plan does not discharge any debt provided for in the Plan until the court grants a discharge on completion of all payments under the Plan, or as otherwise provided in § 1141(d)(5) of the Code. Debtor will not be discharged from any debt excepted from discharge under § 523 of the Code, except as provided in Rule 4007(c) of the Federal Rules of Bankruptcy Procedure.

**[Option 2 – If the Debtor is a partnership and § 1141(d)(3) of the Code is not applicable]**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code. However, the Debtor shall not be discharged from any debt imposed by the Plan. After the effective date of the Plan your claims against the Debtor will be limited to the debts imposed by the Plan.

**[Option 3 – If the Debtor is a corporation and § 1141(d)(3) is not applicable]**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to



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the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

**[Option 4 – If § 1141(d)(3) is applicable]**

No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

**B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

[If the Debtor is not an individual, add the following: “The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.”]

[If the Debtor is an individual, add the following: “Upon request of the Debtor, the United States trustee, or the holder of an allowed unsecured claim, the Plan may be modified at any time after confirmation of the Plan but before the completion of payments under the Plan, to (1) increase or reduce the amount of payments under the Plan on claims of a particular class, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.”]

**C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

**VI. OTHER PLAN PROVISIONS**

[Insert other provisions here, as necessary and appropriate.]

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\_\_\_\_\_  
[Signature of the Plan Proponent]

\_\_\_\_\_  
[Signature of the Attorney for the Plan Proponent]

**EXHIBITS**



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**Exhibit A – Copy of Proposed Plan of Reorganization**

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**Exhibit B – Identity and Value of Material Assets of Debtor**

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**Exhibit C – Prepetition Financial Statements**  
(to be taken from those filed with the court)



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**Exhibit D – [Most Recently Filed Postpetition Operating Report][Summary of Postpetition Operating Reports]**

Exhibit E – Liquidation Analysis

Plan Proponent’s Estimated Liquidation Value of Assets

Assets

a. Cash on hand	\$
b. Accounts receivable	\$
c. Inventory	\$
d. Office furniture & equipment	\$
e. Machinery & equipment	\$
f. Automobiles	\$
g. Building & Land	\$
h. Customer list	\$
i. Investment property (such as stocks, bonds or other financial assets)	\$
j. Lawsuits or other claims against third-parties	\$
k. Other intangibles (such as avoiding powers actions)	\$

Total Assets at Liquidation Value \$

Less:

Secured creditors’ recoveries \$

Less:

Chapter 7 trustee fees and expenses \$

Less:

Chapter 11 administrative expenses \$

Less:

Priority claims, excluding administrative expense claims \$

[Less:

Debtor’s claimed exemptions] \$

(1) Balance for unsecured claims \$

(2) Total dollar amount of unsecured claims \$

Percentage of Claims Which Unsecured Creditors Would Receive Or Retain in a Chapter 7 Liquidation: \$

Percentage of Claims Which Unsecured Creditors Will Receive or Retain under the Plan: \_\_\_\_\_% [Divide (1) by (2)]

\_\_\_\_\_%

Exhibit F – Cash on hand on the effective date of the Plan

Cash on hand on effective date of the Plan:	\$
Less –	
Amount of administrative expenses payable on effective date of the Plan	-
Amount of statutory costs and charges	-
Amount of cure payments for executory contracts	-
Other Plan Payments due on effective date of the Plan	-
	\$
Balance after paying these amounts.....	

The sources of the cash Debtor will have on hand by the effective date of the Plan are estimated as follows:

\$	Cash in Debtor's bank account now
+	Additional cash Debtor will accumulate from net earnings between now and effective date of the Plan [state the basis for such projections]
+	Borrowing [separately state terms of repayment]
+	Capital Contributions
+	Other
\$	Total [This number should match “cash on hand” figure noted above]



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Exhibit G – Projections of Cash Flow and Earnings for Post-Confirmation Period

## Form 25B, Instructions (12/08)

**Instructions for Form Disclosure Statement****BACKGROUND AND GENERAL INSTRUCTIONS**

1. This small business chapter 11 disclosure statement form is promulgated pursuant to § 433 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. This form may be used in cases where the debtor (whether an individual or an artificial entity) is a small business debtor within the meaning of § 101(51D) of the Code. This form provides a format for disseminating to parties in interest information about the plan of reorganization in a debtor's small business chapter 11 case, so that those parties can make reasonably informed judgments whether to accept, reject or object to the plan. Because the relevant legal requirements for and effects of a plan's confirmation may vary depending on the nature of the debtor, and because the details of any proposed reorganization necessarily vary, this form is intended to provide a format for disclosure, rather than a specific prescription for the language or content of a disclosure statement in any particular case. The form highlights the factual and legal disclosures required by § 1125 of the Code in connection with the plan's confirmation. It is not intended to restrict the plan's proponent from providing additional information where that would be useful.
2. Proponents are encouraged to present material information in as clear a fashion as possible, including, where feasible, in an accompanying executive summary, approved by the court, that highlights particular creditors' or interest holders' voting status and treatment under the plan.
3. Some language in this form appears in brackets. The bracketed language sometimes instructs the plan's proponent to provide certain information, and sometimes provides optional or alternative language that should be used when and where appropriate. Proponents should make the necessary insertions and/or delete inapplicable language.

**SPECIFIC INSTRUCTIONS****INTRODUCTORY SECTION**

4. The introductory section describes the purpose of the disclosure statement, provides procedural information regarding confirmation of the plan, including where to obtain additional information, indicates whether particular claimants or interest holders will be entitled to vote on the plan, and details the procedures and deadlines for filing objections to confirmation of the plan. A copy of the plan should be attached to the debtor's disclosure statement as

Exhibit A. Where the proposed distribution to unsecured creditors and other classes can be succinctly summarized, describe that distribution in the second introductory paragraph.

5. In some cases, the court will approve the debtor's disclosure statement prior to solicitation of acceptance or rejection of the plan. See Rule 3017. In other cases, the court may conditionally approve the disclosure statement, and combine the hearing on the adequacy of disclosure and the hearing on confirmation of the plan into one hearing. See Rule 3017.1. Use the bracketed language as appropriate in subsections I.B. and I.C.

#### BACKGROUND SECTION

6. The second part of disclosure statement provides a history of the debtor's business, both before and during the debtor's bankruptcy case. In this section, the plan proponent should describe the debtor's business, the events that led to the filing of the debtor's bankruptcy petition, and the key events in the debtor's bankruptcy case, and identify the people who managed the debtor during the case and who will manage the debtor after the plan is confirmed. The proponent should disclose its intentions with regard to, and the status of, avoidance actions. If the debtor or proponent intends to bring an avoidance action against a particular creditor or equity interest holder, the disclosure statement should disclose this fact so that the creditor or equity interest holder can use that information to determine the value of its claim or interest when considering whether to accept or reject the plan. If the debtor or plan proponent is uncertain as to what avoidance actions might be brought, that fact should be disclosed as well, so that claimants and equity interest holders can take that information into account, as well, when considering whether to accept or reject the plan.
7. A schedule of the debtor's material assets, along with the basis for their valuation should be attached to the debtor's disclosure statement as Exhibit B. Under § 1116 of the Code, the debtor must also file its most recent prepetition financial statements with the petition. These financial statements should be attached to the debtor's disclosure statement as Exhibit C.
8. Sections 434 and 435 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, and § 308 of the Code require the debtor to file periodic operating reports with the court. The most recent such reports, or a summary of the filed reports, should be attached to the debtor's disclosure statement as Exhibit D.



## SUMMARY OF PLAN

9. The third part of the disclosure statement describes the treatment of various creditors and equity interest holders who will receive distributions under the plan. Because the treatment of certain claims, such as administrative expense claims, allowed under § 503 of the Code, and priority tax claims, allowed under § 507(a)(8) of the Code, is statutorily specified, these claims are not placed into classes. Secured creditors are generally each placed in their own class, with the particular treatment specified for that class. Section 1129(a)(9)(D) of the Code provides that a secured tax claim which would otherwise meet the description of a priority tax claim under § 507(a)(8) of the Code is to be paid in the same manner and over the same period as prescribed in § 507(a)(8) of the Code. While it is not required, the proponent may, where applicable, wish to classify claims under § 507(a)(9) and (10) of the Code. Finally, the disclosure statement should describe the treatment of the general unsecured claimants and equity interest holders. An administrative convenience class may be created pursuant to § 1122(b) of the Code, and other classes of unsecured claims may be created to the extent permitted by applicable case law. Also, while the suggested language of the form contemplates that plan distributions will be in the form of monthly payments, other forms of consideration are permitted and this section of the disclosure statement should be modified to describe clearly the form(s), methods and timing of payments to be made under the particular plan.
10. The disclosure statement should also detail the sources of funds for payments to be made under the plan. These should include the sources of funds for payments to be made on the effective date of the plan (detailed in Exhibit F), and the source of payments that will be made over the life of the plan. The description should be supported by projections about the income and profitability of the debtor. The plan proponent must also fully describe post-confirmation management, as required by § 1129(a)(5) of the Code. The disclosure statement should also describe any risk factors that might influence the debtor's ability to complete the payments or affect the value of the distributions provided for under the plan. Also, the disclosure statement should list any material executory contracts that will be assumed pursuant to the plan, as well as any material contracts that will be rejected. To the extent possible, the tax consequences of the plan should also be summarized.

## CONFIRMATION REQUIREMENTS AND PROCEDURES SECTION

11. The fourth part of the disclosure statement sets forth the procedures and requirements for confirmation. In this regard, the disclosure statement should inform creditors and equity interest holders of (1) which class they are in, (2) whether they are entitled to vote, and (3) the amount of their claim allowed for voting purposes. This may be accomplished in the disclosure statement itself or, as noted above, in a summary statement, approved by the court, and sent to

the parties in interest along with the disclosure statement. A liquidation analysis of the debtor should be attached to the disclosure statement as Exhibit E. As noted above, the sources of funds for payments to be made on the effective date of the plan should be detailed in Exhibit F, and projections about the profitability and cash flow of the debtor's business after confirmation should be attached to the disclosure statement as Exhibit G.

#### EFFECT OF PLAN CONFIRMATION

12. The fifth part of the disclosure statement describes the effect of plan confirmation. The language used here should be chosen with care, as the effect of confirmation differs depending on whether the debtor is an individual, partnership, or corporation, and on whether the debtor will continue in business post-confirmation or will, instead, be liquidated.
13. If the plan provides that, after its confirmation, property of the estate will vest in and be distributed by someone other than the debtor, the disclosure statement should identify any such property and the person in whom the property will vest.

#### OTHER PROVISIONS

14. Other provisions may be added in Part VI as desired and appropriate.

**FORM B25C. Official Form 25C.**

**Official Form 25C (12/08)**

**United States Bankruptcy Court**  
 \_\_\_\_\_  
 District of \_\_\_\_\_

In re \_\_\_\_\_  
 Debtor

Case No. \_\_\_\_\_

Small Business Case under Chapter 11

**SMALL BUSINESS MONTHLY OPERATING REPORT**

Month: \_\_\_\_\_

Date Filed: \_\_\_\_\_

Line of Business: \_\_\_\_\_ NAICS Code: \_\_\_\_\_

IN ACCORDANCE WITH TITLE 28, SECTION 1746, OF THE UNITED STATES CODE, I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE EXAMINED THE FOLLOWING SMALL BUSINESS MONTHLY OPERATING REPORT AND THE ACCOMPANYING ATTACHMENTS AND, TO THE BEST OF MY KNOWLEDGE, THESE DOCUMENTS ARE TRUE, CORRECT AND COMPLETE.

RESPONSIBLE PARTY:

\_\_\_\_\_  
 ORIGINAL SIGNATURE OF RESPONSIBLE PARTY

\_\_\_\_\_  
 PRINTED NAME OF RESPONSIBLE PARTY

**QUESTIONNAIRE: (All questions to be answered on behalf of the debtor.)**

**YES NO**

- |   |                          |                          |
|---|--------------------------|--------------------------|
| 1. IS THE BUSINESS STILL OPERATING?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. HAVE YOU PAID ALL YOUR BILLS ON TIME THIS MONTH?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. DID YOU PAY YOUR EMPLOYEES ON TIME?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. HAVE YOU DEPOSITED ALL THE RECEIPTS FOR YOUR BUSINESS INTO THE DIP ACCOUNT THIS MONTH?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. HAVE YOU FILED ALL OF YOUR TAX RETURNS AND PAID ALL OF YOUR TAXES THIS MONTH?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. HAVE YOU TIMELY FILED ALL OTHER REQUIRED GOVERNMENT FILINGS?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. HAVE YOU PAID ALL OF YOUR INSURANCE PREMIUMS THIS MONTH?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. DO YOU PLAN TO CONTINUE TO OPERATE THE BUSINESS NEXT MONTH?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. ARE YOU CURRENT ON YOUR QUARTERLY FEE PAYMENT TO THE U.S. TRUSTEE?   | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. HAVE YOU PAID ANYTHING TO YOUR ATTORNEY OR OTHER PROFESSIONALS THIS MONTH?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. DID YOU HAVE ANY UNUSUAL OR SIGNIFICANT UNANTICIPATED EXPENSES THIS MONTH?  | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. HAS THE BUSINESS SOLD ANY GOODS OR PROVIDED SERVICES OR TRANSFERRED ANY ASSETS TO ANY BUSINESS RELATED TO THE DIP IN ANY WAY? | <input type="checkbox"/> | <input type="checkbox"/> |



Official Form 25C (12/08) – Cont.

2

13. DO YOU HAVE ANY BANK ACCOUNTS OPEN OTHER THAN THE DIP ACCOUNT?

☐

☐
14. HAVE YOU SOLD ANY ASSETS OTHER THAN INVENTORY THIS MONTH?

☐

☐
15. DID ANY INSURANCE COMPANY CANCEL YOUR POLICY THIS MONTH?

☐

☐
16. HAVE YOU BORROWED MONEY FROM ANYONE THIS MONTH?

☐

☐
17. HAVE YOU PAID ANY BILLS YOU OWED BEFORE YOU FILED BANKRUPTCY?

☐

☐

TAXES

DO YOU HAVE ANY PAST DUE TAX RETURNS OR PAST DUE POST-PETITION TAX OBLIGATIONS?

☐

☐

IF YES, PLEASE PROVIDE A WRITTEN EXPLANATION INCLUDING WHEN SUCH RETURNS WILL BE FILED, OR WHEN SUCH PAYMENTS WILL BE MADE AND THE SOURCE OF THE FUNDS FOR THE PAYMENT.

(Exhibit A)

INCOME

PLEASE SEPARATELY LIST ALL OF THE INCOME YOU RECEIVED FOR THE MONTH. THE LIST SHOULD INCLUDE ALL INCOME FROM CASH AND CREDIT TRANSACTIONS. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

TOTAL INCOME

---

(Exhibit B)

EXPENSES

PLEASE SEPARATELY LIST ALL EXPENSES PAID BY CASH OR BY CHECK FROM YOUR BANK ACCOUNTS THIS MONTH. INCLUDE THE DATE PAID, WHO WAS PAID THE MONEY, THE PURPOSE AND THE AMOUNT. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

TOTAL EXPENSES

---

(Exhibit C)

CASH PROFIT

INCOME FOR THE MONTH (TOTAL FROM EXHIBIT B)

---

EXPENSES FOR THE MONTH (TOTAL FROM EXHIBIT C)

---

(Subtract Line C from Line B)

CASH PROFIT FOR THE MONTH

---

UNPAID BILLS

PLEASE ATTACH A LIST OF ALL DEBTS (INCLUDING TAXES) WHICH YOU HAVE INCURRED SINCE THE DATE YOU FILED BANKRUPTCY BUT HAVE NOT PAID. THE LIST MUST INCLUDE THE DATE THE DEBT WAS INCURRED, WHO IS OWED THE MONEY, THE PURPOSE OF THE DEBT AND WHEN THE DEBT IS DUE. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

TOTAL PAYABLES \_\_\_\_\_

(Exhibit D)

MONEY OWED TO YOU

PLEASE ATTACH A LIST OF ALL AMOUNTS OWED TO YOU BY YOUR CUSTOMERS FOR WORK YOU HAVE DONE OR THE MERCHANDISE YOU HAVE SOLD. YOU SHOULD INCLUDE WHO OWES YOU MONEY, HOW MUCH IS OWED AND WHEN IS PAYMENT DUE. (THE U.S. TRUSTEE MAY WAIVE THIS REQUIREMENT.)

TOTAL RECEIVABLES \_\_\_\_\_

(Exhibit E)

BANKING INFORMATION

PLEASE ATTACH A COPY OF YOUR LATEST BANK STATEMENT FOR EVERY ACCOUNT YOU HAVE AS OF THE DATE OF THIS FINANCIAL REPORT OR HAD DURING THE PERIOD COVERED BY THIS REPORT.

\_\_\_\_\_  
\_\_\_\_\_

(Exhibit F)

EMPLOYEES

NUMBER OF EMPLOYEES WHEN THE CASE WAS FILED?

NUMBER OF EMPLOYEES AS OF THE DATE OF THIS MONTHLY REPORT?

\_\_\_\_\_  
\_\_\_\_\_

PROFESSIONAL FEES

BANKRUPTCY RELATED:

PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD?

\_\_\_\_\_  
\_\_\_\_\_

TOTAL PROFESSIONAL FEES RELATING TO THE BANKRUPTCY CASE PAID SINCE THE FILING OF THE CASE?

NON-BANKRUPTCY RELATED:

PROFESSIONAL FEES PAID NOT RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD?

Official Form 25C (12/08) – Cont.

4

TOTAL PROFESSIONAL FEES PAID NOT RELATING TO THE BANKRUPTCY CASE PAID DURING THIS REPORTING PERIOD?

PROJECTIONS

COMPARE YOUR ACTUAL INCOME AND EXPENSES TO THE PROJECTIONS FOR THE FIRST 180 DAYS OF YOUR CASE PROVIDED AT THE INITIAL DEBTOR INTERVIEW.

	<u>Projected</u>	<u>Actual</u>	<u>Difference</u>
INCOME			
EXPENSES			
CASH PROFIT			

TOTAL PROJECTED INCOME FOR THE NEXT MONTH:

TOTAL PROJECTED EXPENSES FOR THE NEXT MONTH:

TOTAL PROJECTED CASH PROFIT FOR THE NEXT MONTH:

ADDITIONAL INFORMATION

PLEASE ATTACH ALL FINANCIAL REPORTS INCLUDING AN INCOME STATEMENT AND BALANCE SHEET WHICH YOU PREPARE INTERNALLY.



FORM B26. Official Form 26.

Official Form 26 (12/08)

United States Bankruptcy Court  
District of \_\_\_\_\_

In re \_\_\_\_\_ Case No. \_\_\_\_\_  
Debtor Chapter 11

PERIODIC REPORT REGARDING VALUE, OPERATIONS AND PROFITABILITY OF  
ENTITIES IN WHICH THE ESTATE OF [NAME OF DEBTOR]  
HOLDS A SUBSTANTIAL OR CONTROLLING INTEREST

This is the report as of \_\_\_\_\_ on the value, operations and profitability of those entities in which the estate holds a substantial or controlling interest, as required by Bankruptcy Rule 2015.3. The estate of [Name of Debtor] holds a substantial or controlling interest in the following entities:

Name of Entity	Interest of the Estate	Tab #

This periodic report (the “Periodic Report”) contains separate reports (“Entity Reports”) on the value, operations, and profitability of each entity listed above.

Each Entity Report shall consist of three exhibits. Exhibit A contains a valuation estimate for the entity as of a date not more than two years prior to the date of this report. It also contains a description of the valuation method used. Exhibit B contains a balance sheet, a statement of income (loss), a statement of cash flows, and a statement of changes in shareholders’ or partners’ equity (deficit) for the period covered by the Entity Report, along with summarized footnotes. Exhibit C contains a description of the entity’s business operations.

THIS REPORT MUST BE SIGNED BY A REPRESENTATIVE OF THE TRUSTEE OR DEBTOR IN  
POSSESSION.

The undersigned, having reviewed the above listing of entities in which the estate of [Debtor] holds a substantial or controlling interest, and being familiar with the Debtor’s financial affairs, verifies under the penalty of perjury that the listing is complete, accurate and truthful to the best of his/her knowledge.

Official Form 26 (12/08) – Cont.

2

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Name of Authorized Individual

\_\_\_\_\_  
Title of Authorized Individual

[If the Debtor is an individual or in a joint case]

\_\_\_\_\_  
Signature(s) of Debtor(s) (Individual/Joint)

\_\_\_\_\_  
Signature of Debtor

\_\_\_\_\_  
Signature of Joint Debtor

Official Form 26 (12/08) – Cont.

3

**Exhibit A****Valuation Estimate for [Name of Entity]**

[Provide a statement of the entity's value and the value of the estate's interest in the entity, including a description of the basis for the valuation, the date of the valuation and the valuation method used. This valuation must be no more than two years old. Indicate the source of this information.]



Official Form 26 (12/08) – Cont.

4

**Exhibit B**

**Financial Statements for [Insert Name of Entity]**

Official Form 26 (12/08) – Cont.

5

**Exhibit B-1****Balance Sheet for [Name of Entity]****As of [date]**

[Provide a balance sheet dated as of the end of the most recent six-month period of the current fiscal year and as of the end of the preceding fiscal year. Indicate the source of this information.]

Official Form 26 (12/08) – Cont.

6

**Exhibit B-2****Statement of Income (Loss) for [Name of Entity]**

Period ending [date]

[Provide a statement of income (loss) for the following periods:

- (i) For the initial report:
  - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
  - b. the prior fiscal year.
- (ii) For subsequent reports, since the closing date of the last report.

Indicate the source of this information.]



Official Form 26 (12/08) – Cont.

7

**Exhibit B-3****Statement of Cash Flows for [Name of Entity]****For the period ending [date]**

[Provide a statement of changes in cash flows for the following periods:

(i) For the initial report:

a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and

b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Indicate the source of this information.]

Official Form 26 (12/08) – Cont.

8

**Exhibit B-4****Statement of Changes in Shareholders'/Partners' Equity (Deficit) for [Name of Entity]  
period ending [date]**

[Provide a statement of changes in shareholders'/partners equity (deficit) for the following periods:

(i) For the initial report:

- a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
- b. the prior fiscal year.

(ii) For subsequent reports, since the closing date of the last report.

Indicate the source of this information.]

**Exhibit C**  
**Description of Operations for [name of entity]**

[Describe the nature and extent of the estate’s interest in the entity.]

Describe the business conducted and intended to be conducted by the entity, focusing on the entity’s dominant business segment(s). Indicate the source of this information.]



Form 26, Instructions (12/08)

**Instructions for Periodic Report Concerning Related Entities**

**General Instructions**

1. This form periodic report ("Periodic Report") on value, profitability, and operations of entities in which the estate holds a substantial or controlling interest (the "Form") implements § 419 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 19-8, 119 Stat. 23 (April 20, 2005) ("BAPCPA"). This Form should be used when required by Fed. R. Bankr. P. 2015.3, with such variations as may be approved by the court pursuant to subdivisions (d) and (e) of that rule.
2. In a chapter 11 case, the trustee or debtor in possession shall file Periodic Reports of the value, operations, and profitability of each entity that is not also a debtor in a case under title 11, and in which the estate holds a substantial or controlling interest. The reports shall be prepared as prescribed by this Form, and shall be based upon the most recent information reasonably available to the trustee or debtor in possession.
3. Rule 2015.3 provides that, where the estate controls or owns at least a 20 percent interest of an entity, the estate's interest is presumed to be substantial or controlling. Where the estate controls or owns less than a 20 percent interest, the rule presumes that the estate's interest is not substantial or controlling. The question of substantial or controlling interest is, however, a factual one to be decided in each case.
4. The first Periodic Report required by subdivision (a) of Rule 2015.3 shall be filed no later than five days before the first date set for the meeting of creditors under § 341 of the Code. Subsequent Periodic Reports shall be filed no less frequently than every six months thereafter, until a plan of reorganization becomes effective or the case is closed, dismissed, or converted. Copies of the Periodic Report shall be served on the U.S. Trustee, any committee appointed under § 1102 of the Code, and any other party in interest that has filed a request therefor.
5. The source of the information contained in each Periodic Report shall be indicated.

**Specific Instructions**

6. Each entity subject to the reporting requirement of Rule 2015.3 shall be listed in the table contained on the first page of the form. Reports for each such entity shall be placed behind separate tabs, and each such report shall consist of three exhibits. Exhibit A shall provide valuation information; Exhibit B shall provide financial statements; and Exhibit C shall provide a description of operations.

Instructions for Exhibit A – Valuation

7. Provide a statement of the entity's value and the value of the estate's interest in the entity, including a description of the basis for the valuation, the date of the valuation, the valuation method used and the source or preparer of the information. This valuation must be no more than two years old.

Instructions for Exhibit B – Financial Statements and Profitability

8. The financial statements may be unaudited. The financial statements should be prepared in accordance with generally accepted accounting principles in the United States ("USGAAP"); deviations, if any from USGAAP, shall be disclosed. Indicate the source or preparer of the information.
9. Exhibit B shall include the following financial statements, and shall indicate the source of the information presented:
- (a) A balance sheet dated as of the end of the most recent six-month period of the current fiscal year and as of the end of the preceding fiscal year.
  - (b) A statement of income (loss) for the following periods:
    - (i) For the initial report:
      - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
      - b. the prior fiscal year.
    - (ii) For subsequent reports, since the closing date of the last report.
  - (c) A statement of changes in cash flows for the following periods:
    - (i) For the initial report:
      - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
      - b. the prior fiscal year.
    - (ii) For subsequent reports, since the closing date of the last report.
  - (d) A statement of changes in shareholders'/partners' equity (deficit) for the following periods:
    - (i) For the initial report:
      - a. the period between the end of the preceding fiscal year and the end of the most recent six-month period of the current fiscal year; and
      - b. the prior fiscal year.
    - (ii) For subsequent reports, since the closing date of the last report.
10. The balance sheet contained in Exhibit B-1 may include only major captions with the exception of inventories. Data as to raw materials, work in process, and finished goods inventories should be included either on the face of the balance sheet or in the notes to

the financial statements, if applicable. Where any major balance sheet caption is less than 10% of total assets, the caption may be combined with others. An illustrative example of such a balance sheet is set forth below:

XYZ Company Balance Sheet As of _____		
<u>Assets</u>	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Cash and cash items	_____	_____
Marketable securities	_____	_____
Accounts and notes receivable (non-affiliates), net of allowances	_____	_____
Accounts due from affiliates	_____	_____
Inventories		
Raw materials	_____	_____
Work in Process	_____	_____
Finished goods	_____	_____
Long-term contract costs	_____	_____
Supplies	_____	_____
LIFO reserve	_____	_____
Total inventories	_____	_____
Prepaid expenses	_____	_____
Other current assets	_____	_____
Total current assets	_____	_____
Securities of affiliates	_____	_____
Indebtedness of affiliates (non-current)	_____	_____
Other investments	_____	_____
Property, plant and equipment, net of accumulated depreciation and amortization	_____	_____
Intangible assets	_____	_____
Other assets	_____	_____
Total Assets	_____	_____
<u>Liabilities and Shareholders'/Partners' Equity</u>	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Accounts and notes payable (non-affiliates)	_____	_____
Payables to affiliates	_____	_____
Other current liabilities	_____	_____
Total current liabilities	_____	_____



Form 26 Instr. (12/08) – Cont.

4

Bonds, mortgages, and other long-term debt, including capitalized leases	_____	_____
Indebtedness to affiliates (non-current)	_____	_____
Other liabilities	_____	_____
Commitments and contingencies	_____	_____
Deferred credits	_____	_____
Minority interests in consolidated subsidiaries	_____	_____
Preferred stock subject to mandatory redemption or whose redemption is outside the control of the issuer	_____	_____
Total liabilities	_____	_____
Shareholders' equity	_____	_____
Total liabilities and shareholders'/partners' equity	_____	_____

11. The statement of income (loss) contained in Exhibit B-2 should also include major captions. When any major statement of income (loss) caption is less than 15% of net income (loss) for the most recent fiscal year, the caption may be combined with others. Notwithstanding these tests, *de minimis* amounts need not be shown separately. An illustrative example of such a statement of income (loss) is set forth below:

XYZ Company  
Statement of income (loss)  
For the periods ending \_\_\_\_\_

	<u>Year to date</u>	<u>Prior Fiscal Year</u>
Net sales and gross revenues	_____	_____
Costs and expenses applicable to sales and revenues	_____	_____
Gross profit	_____	_____
Selling, general, and administrative expenses	_____	_____
Provision for doubtful accounts	_____	_____
Other general expenses	_____	_____
Operating income (loss)	_____	_____
Non-operating income (loss)	_____	_____
Interest and amortization of debt discount	_____	_____
Non-operating expenses	_____	_____
Income or loss before income tax expense	_____	_____
Income tax expense	_____	_____
Minority interest in income of consolidated subsidiaries	_____	_____
Equity in earnings of unconsolidated subsidiaries	_____	_____

and 50 per cent or less owned persons		
Income or loss from continuing operations		
Discontinued operations		
Income or loss before extraordinary items and cumulative effects of changes in accounting principles		
Extraordinary items, net of tax		
Cumulative effects of changes in accounting principles		
Net income (loss)		
Earnings per share data		

12. The statement of cash flows in Exhibit B-3 may be abbreviated, starting with a single figure of funds provided by operations and showing other changes individually only when they exceed 10% of the average of funds provided by operations for the most recent fiscal year. Notwithstanding this test, *de minimis* amounts need not be shown separately. An illustrative example of such a statement of cash flows is set forth below:

XYZ Company		
Statement of cash flows		
For the periods ending _____		
	Year to date	Prior Fiscal Year
Net cash provided (used) by operating activities	_____	_____
Cash flows from investing activities		
Capital expenditures	_____	_____
Sale of _____	_____	_____
Other (describe) _____	_____	_____
Net cash provided (used) in investing activities	_____	_____
Cash flows provided (used) by financing activities		
Net borrowings under line-of-credit	_____	_____
Principal payments under capital leases	_____	_____
Proceeds from issuance of long-term debt	_____	_____
Proceeds from sale of stock	_____	_____
Dividends paid/Partner Distributions	_____	_____
Net cash provided (used) in financing activities	_____	_____
Net increase (decrease) in cash and cash equivalents	_____	_____
Cash and cash equivalents		

Beginning of period

End of period

13. Subject to paragraph 11 above, an illustrative example of such a statement of changes in shareholders'/partners' equity in Exhibit B-4 is set forth below:

XYZ Company		
Statement of changes in shareholders'/partners' equity (deficit)		
For the periods ending		
	Year to date	Prior Fiscal Year
Balance, beginning of period		
Comprehensive net income		
Net income		
Other comprehensive		
income, net of tax		
Unrealized gains (losses) on		
securities		
Foreign translation adjustments		
Minimum pension liability		
adjustment		
Issuance of stock		
Dividends paid		
Balance, end of period		

14. The financial information in the financial statements shall include disclosures either on the face of the statements or in accompanying footnotes sufficient to make the information not misleading. Disclosures should encompass, but not be limited to, for example, accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization including significant borrowings or modification of existing financing arrangements; and the reporting entity resulting from business combinations or dispositions. Where material contingencies exist, disclosure of such matters shall be provided.
15. If appropriate, the statement of income (loss) should show earnings (loss) per share and dividends declared per share applicable to common stock. The basis of the earnings per share computation should be stated together with the number of shares used in the computation.



16. In addition to the financial statements required above, entities in the development stage should provide the cumulative financial statements (condensed to the same degree as allowed above) and disclosures required by Statement of Financial Accounting Standards No. 7, "Accounting and Reporting by Development Stage Enterprises," to the date of the latest balance sheet presented.

Instructions for Exhibit C – Description of Operations

17. The description of operations contained in Exhibit C of this Form should describe the nature and extent of the estate's interest in the entity, as well as the business conducted by and intended to be conducted by the entity, focusing on the entity's dominant business segment(s) including, but not limited to the following as applicable:
- Principal product produced or services rendered and methods of distribution
  - Description of the status of a new product or segment if a public announcement has been made or information publicly disseminated
  - Sources and availability of raw materials
  - Any significant patents, trademarks, licenses, franchises, and concessions held
  - Seasonality of the business
  - Dependence upon a single customer or a few customers
  - Dollar amount of backlog orders believed to be firm
  - Exposure to renegotiation or redetermination or termination of significant contracts
  - Competitive conditions facing the entity
  - Description of properties owned
  - Significant legal proceedings
  - Material purchase commitments
  - Identified trends events or uncertainties that are likely to have a material impact on the entity's short-term liquidity, net sales, or income from continuing operations
18. The source preparer of the information should be indicated.

**FORM B27. Reaffirmation Agreement Cover Sheet.**

B27 (Official Form 27) (12/09)

**UNITED STATES BANKRUPTCY COURT**In re \_\_\_\_\_,  
DebtorCase No. \_\_\_\_\_  
Chapter \_\_\_\_\_**REAFFIRMATION AGREEMENT COVER SHEET**

This form must be completed in its entirety and filed, with the reaffirmation agreement attached, within the time set under Rule 4008. It may be filed by any party to the reaffirmation agreement.

1. Creditor's Name: \_\_\_\_\_
2. Amount of the debt subject to this reaffirmation agreement:  
\$ \_\_\_\_\_ on the date of bankruptcy \$ \_\_\_\_\_ to be paid under reaffirmation agreement
3. Annual percentage rate of interest: \_\_\_\_\_ % prior to bankruptcy  
\_\_\_\_\_ % under reaffirmation agreement ( \_\_\_\_\_ Fixed Rate \_\_\_\_\_ Adjustable Rate)
4. Repayment terms (if fixed rate): \$ \_\_\_\_\_ per month for \_\_\_\_\_ months
5. Collateral, if any, securing the debt: Current market value: \$ \_\_\_\_\_  
Description: \_\_\_\_\_
6. Does the creditor assert that the debt is nondischargeable? \_\_\_\_ Yes \_\_\_\_ No  
(If yes, attach a declaration setting forth the nature of the debt and basis for the contention that the debt is nondischargeable.)

Debtor's Schedule I and J EntriesDebtor's Income and Expenses  
as Stated on Reaffirmation Agreement7A. Total monthly income from \$ \_\_\_\_\_  
Schedule I, line 167B. Monthly income from all \$ \_\_\_\_\_  
sources after payroll deductions8A. Total monthly expenses \$ \_\_\_\_\_  
from Schedule J, line 18

8B. Monthly expenses \$ \_\_\_\_\_

9A. Total monthly payments on \$ \_\_\_\_\_  
reaffirmed debts not listed on  
Schedule J9B. Total monthly payments on \$ \_\_\_\_\_  
reaffirmed debts not included in  
monthly expenses10B. Net monthly income \$ \_\_\_\_\_  
(Subtract sum of lines 8B and 9B from  
line 7B. If total is less than zero, put the  
number in brackets.)

B27 (Official Form 27) (12/09)

- 11. Explain with specificity any difference between the income amounts (7A and 7B):
  
  
  
- 12. Explain with specificity any difference between the expense amounts (8A and 8B):

If line 11 or 12 is completed, the undersigned debtor, and joint debtor if applicable, certifies that any explanation contained on those lines is true and correct.

\_\_\_\_\_  
Signature of Debtor (only required if  
line 11 or 12 is completed)

\_\_\_\_\_  
Signature of Joint Debtor (if applicable, and only  
required if line 11 or 12 is completed)

Other Information

☐ Check this box if the total on line 10B is less than zero. If that number is less than zero, a presumption of undue hardship arises (unless the creditor is a credit union) and you must explain with specificity the sources of funds available to the Debtor to make the monthly payments on the reaffirmed debt:

Was debtor represented by counsel during the course of negotiating this reaffirmation agreement?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No

If debtor was represented by counsel during the course of negotiating this reaffirmation agreement, has counsel executed a certification (affidavit or declaration) in support of the reaffirmation agreement?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No

**FILER'S CERTIFICATION**

I hereby certify that the attached agreement is a true and correct copy of the reaffirmation agreement between the parties identified on this Reaffirmation Agreement Cover Sheet.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print/Type Name & Signer's Relation to Case



**RULES OF THE  
UNITED STATES  
COURT OF APPEALS  
FOR THE  
TENTH CIRCUIT**

---

**FEDERAL RULES OF APPELLATE PROCEDURE**

Amended Effective December 1, 2012

**AND**

**TENTH CIRCUIT RULES**

Amended Effective January 1, 2013

THE HISTORY OF THE  
CITY OF LONDON  
FROM THE FOUNDATION  
TO THE PRESENT  
TIME

BY SAMUEL JOHNSON

IN FOUR VOLUMES

VOL. II.

LONDON: Printed by J. DODD, in Pall-mall.

MDCCLXXV.

# TABLE OF CONTENTS.

## TITLE I. APPLICABILITY OF RULES

### **Rule 1. Scope of rules; title.**

#### 10th Cir. Rule 1

- 1.1. Scope of rules.
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- 32.1. Citing judicial dispositions.

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## **Complaint Form**





# **RULES OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

## **FEDERAL RULES OF APPELLATE PROCEDURE AND TENTH CIRCUIT RULES**

### **TITLE I. APPLICABILITY OF RULES**

#### **Rule 1.**

##### **Scope of rules; title.**

(a) *Scope of rules.*

(1) These rules govern procedure in the United States court of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) *Definition.* In these rules, “state” includes the District of Columbia and any United States commonwealth or territory.

(c) *Title.* These rules are to be known as the Federal Rules of Appellate Procedure.  
(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 28, 2010, eff. Dec. 1, 2010.)

#### **10th Cir. Rule 1**

##### **Rule 1.1. Scope of rules.**

These rules supplement the Federal Rules of Appellate Procedure for cases in this court. Parties must comply both with the Federal Rules of Appellate Procedure and with these rules.

##### **Rule 1.2. Organization.**

These rules have been organized and numbered to correspond to the Federal Rules of Appellate Procedure. Provisions having no direct relationship to a Federal Rule of Appellate Procedure are in Rule 47.

##### **Rule 1.3. Citation.**

These rules are known as the Tenth Circuit Rules. A particular rule should be cited as “10th Cir. R. \_\_\_\_\_.”

##### **Rule 1.4. Internal references.**

In these rules, a Tenth Circuit Rule is referred to as “Rule \_\_\_\_\_.” A Federal Rule of Appellate Procedure is referred to as “Fed. R. App. P. \_\_\_\_\_.” A Federal Rule of Civil Procedure is referred to as “Fed. R. Civ. P. \_\_\_\_\_.”  
(As amended eff. Jan. 1, 2012.)

**Rule 1.5. Effective date.**

These local rules are effective January 1, 2013, and apply to all procedures that have not been completed before that date.

(As amended Jan. 1, 2006; eff. Jan. 1, 2007; eff. Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

**Rule 2.****Suspension of rules.**

On its own or a party's motion, a court of appeals may — to expedite its decision or for other good cause — suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 2****Rule 2.1. Suspension of local rules**

The court may suspend any part of these rules in a particular case on its own or on a party's motion.

**TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT****Rule 3.****Appeal as of right — How taken.****(a) *Filing the notice of appeal.***

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

**(b) *Joint or consolidated appeals.***

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

**(c) *Contents of the notice of appeal.*****(1) The notice of appeal must:**

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.



(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) *Serving the notice of appeal.*

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries — and any later docket entries — to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) *Payment of fees.* Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

**10th Cir. Rule 3**

**Rule 3.1. Signing notice of appeal.**

Every notice of appeal must be signed by the appellant's counsel or, if the appellant is proceeding pro se, by the appellant. Counsel's digital signature is sufficient under this Rule.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2012.)

**Rule 3.2. Preliminary record.**

(A) *Contents.* When an appeal is filed, the district court clerk must promptly send the circuit clerk, via hard copy or electronically, copies of:

- (1) the district court's docket entries;
- (2) the notice of appeal;
- (3) any motion for extension of time to file the notice of appeal and the dispositive order;
- (4) pertinent written reports and recommendations, findings and conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge;
- (5) the district court's final judgment or order from which the appeal is taken; and
- (6) all postjudgment motions to reconsider or motions questioning the judgment (see Fed. R. App. P. 4(a)(4) and Fed. R. Civ. P. 60(b)), and any order disposing of them.

(B) *Later filed motions.* The district court clerk must supplement the preliminary record with any later filed postjudgment motions to reconsider or motions questioning the judgment, copies of orders disposing of those motions, and copies of the related docket entries. Sending the circuit clerk the preliminary record and any supplement satisfies the requirements of Fed. R. App. P. 11(e). See Rule 11.2(A) for procedures in pro se appeals. (As amended eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

**Rule 3.3. Fees.**

(A) *Notification.* The district court clerk must notify the circuit clerk when the fees are paid or when leave to proceed without prepayment of fees is granted or denied.

(B) *Dismissal for failure to comply.* An appeal may be dismissed immediately if, within 14 days after filing the notice of appeal, a party fails to:

- (1) pay a required fee;
- (2) file a timely motion for extension of time to pay the required fee; or
- (3) file a timely motion for leave to proceed without prepayment of fees.

(C) *Revocation of release.* Release pending appeal may be revoked if the docket fee is not paid or if the appeal is not timely pursued. The district court must so advise the defendant and the defendant's attorney when release pending appeal is ordered.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2013.)

**Rule 3.4. Docketing statement.**

(A) *Filing.* Within 14 days after filing the notice of appeal, the appellant must file with the circuit clerk a docketing statement on a court approved form (*see* Appendix A, 10th Cir. Form 1). This requirement does not apply to appellants proceeding *pro se*.

(B) *Omitted issue.* An issue not raised in the docketing statement may be raised in the appellant's opening brief.

(As amended Jan. 1, 2008; eff. Jan. 1, 2010; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

**Rule 3.1.****Appeal from a judgment of a magistrate judge in a civil case.**

[Abrogated]

**10th Cir. Rule 3.1**

No local rule.

**Rule 4.****Appeal as of right — When taken.**

(a) *Appeal in a civil case.*

(1) *Time for filing a notice of appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

- (i) the United States;
- (ii) a United States agency;
- (iii) a United States officer or employee sued in an official capacity; or
- (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing before entry of judgment.* A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

(3) *Multiple appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a motion on a notice of appeal.*

- (A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
- (i) for judgment under Rule 50(b);
  - (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
  - (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
  - (iv) to alter or amend the judgment under Rule 59;
  - (v) for a new trial under Rule 59; or
  - (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.
- (B) (i) If a party files a notice of appeal after the court announces or enters a judgment — but before it disposes of any motion listed in Rule 4(a)(4)(A) — the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.
- (ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal — in compliance with Rule 3(c) — within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.
  - (iii) No additional fee is required to file an amended notice.
- (5) *Motion for extension of time.*
- (A) The district court may extend the time to file a notice of appeal if:
- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
  - (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.
- (B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.
- (C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.
- (6) *Reopening the time to file an appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:
- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
  - (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
  - (C) the court finds that no party would be prejudiced.
- (7) *Entry defined.*
- (A) A judgment or order is entered for purposes of this Rule 4(a):
- (i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or
  - (ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:



- The judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a) does not affect the validity of an appeal from that judgment or order.

(b) *Appeal in a criminal case.*

(1) *Time for filing a notice of appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

- (i) the entry of either the judgment or the order being appealed; or
- (ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

- (i) the entry of the judgment or order being appealed; or
- (ii) the filing of a notice of appeal by any defendant.

(2) *Filing before entry of judgment.* A notice of appeal filed after the court announces a decision, sentence, or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

(3) *Effect of a motion on a notice of appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

- (i) for judgment of acquittal under Rule 29;
- (ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or
- (iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order — but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) — becomes effective upon the later of the following:

- (i) the entry of the order disposing of the last such remaining motion; or
- (ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective — without amendment — to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) *Motion for extension of time.* Upon a finding of excusable neglect or good cause, the district court may — before or after the time has expired, with or without motion and notice — extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction.* The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) *Entry defined.* A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) *Appeal by an inmate confined in an institution.*

(1) If an inmate confined in an institution files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or

by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court docketed the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) *Mistaken filing in the court of appeals.* If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010; Apr. 26, 2011, eff. Dec. 1, 2011.)

#### 10th Cir. Rule 4

No local rule.

### **Rule 5.**

#### **Appeal by permission.**

##### *(a) Petition for permission to appeal.*

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

##### *(b) Contents of the petition; answer or cross-petition; oral argument.*

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 10 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) *Form of papers; number of copies.* All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 20 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 5(b)(1)(E). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(d) *Grant of permission; fees; cost bond; filing the record.*

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c).

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; May 7, 2009, eff. Dec. 1, 2009.)

**10th Cir. Rule 5**

**Rule 5.1. Reply briefs.**

A party seeking to file a reply in support of a petition may file a motion to that effect. Replies may be no longer than six pages in length in a 13 point font. The motion must include the proposed reply. Motions filed under this rule must be submitted within 5 business days of service of the response.

(As added eff. Jan. 1, 2012.)

**Rule 5.1.**

**Appeal by leave under 28 U.S.C. § 636(c)(5).**

[Abrogated]

**10th Cir. Rule 5.1**

No local rule.

**Rule 6.**

**Appeal in a bankruptcy case from a final judgment, order, or decree of a district court or bankruptcy appellate panel.**

(a) *Appeal from a judgment, order, or decree of a district court exercising original jurisdiction in a bankruptcy case.* An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) *Appeal from a judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction in a bankruptcy case.*

(1) *Applicability of other rules.* These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b). But there are 3 exceptions:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(b), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to “Form 1 in the Appendix of Forms” must be read as a reference to Form 5; and

(C) when the appeal is from a bankruptcy appellate panel, the term “district court,” as used in any applicable rule, means “appellate panel.”

(2) *Additional rules.* In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) *Motion for rehearing.*

(i) If a timely motion for rehearing under Bankruptcy Rule 8015 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree — but



before disposition of the motion for rehearing — becomes effective when the order disposing of the motion for rehearing is entered.

(ii) Appellate review of the order disposing of the motion requires the party, in compliance with Rules 3(c) and 6(b)(1)(B), to amend a previously filed notice of appeal. A party intending to challenge an altered or amended judgment, order, or decree must file a notice of appeal or amended notice of appeal within the time prescribed by Rule 4 — excluding Rules 4(a)(4) and 4(b) — measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) *The record on appeal.*

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8006 — and serve on the appellee — a statement of the issues to be presented on appeal and a designation of the record to be certified and sent to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel;
- and a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) *Forwarding the record.*

(i) When the record is complete, the district clerk or bankruptcy appellate panel clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble and forward the record. The court of appeals may provide by rule or order that a certified copy of the docket entries be sent in place of the redesignated record, but any party may request at any time during the pendency of the appeal that the redesignated record be sent.

(D) *Filing the record.* Upon receiving the record — or a certified copy of the docket entries sent in place of the redesignated record — the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

## **10th Cir. Rule 6**

### **Rule 6.1. Appendices in bankruptcy appeals.**

Rules 30.1, 30.2, and 30.3 apply to all bankruptcy appeals.

## **Rule 7.**

### **Bond for costs on appeal in a civil case.**

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 7**

No local rule.

**Rule 8.****Stay or injunction pending appeal.****(a) *Motion for stay.***

(1) *Initial motion in the district court.* A party must ordinarily move first in the district court for the following relief:

- (A) a stay of the judgment or order of a district court pending appeal;
- (B) approval of a supersedeas bond; or
- (C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) *Motion in the court of appeals; conditions on relief.* A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

- (i) show that moving first in the district court would be impracticable; or
- (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

- (i) the reasons for granting the relief requested and the facts relied on;
- (ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and
- (iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) *Proceeding against a surety.* If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district clerk as the surety's agent on whom any papers affecting the surety's liability on the bond or undertaking may be served. On motion, a surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly mail a copy to each surety whose address is known.

(c) *Stay in a criminal case.* Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 8****Rule 8.1. Required showing.**

No application for a stay or an injunction pending appeal will be considered unless the applicant addresses all of the following:

(A) the basis for the district court's or agency's subject matter jurisdiction and the basis for the court of appeals' jurisdiction, including citation to statutes and a statement of facts establishing jurisdiction;

(B) the likelihood of success on appeal;

(C) the threat of irreparable harm if the stay or injunction is not granted;

(D) the absence of harm to opposing parties if the stay or injunction is granted; and

(E) any risk of harm to the public interest.  
(Amended effective January 1, 2003.)

**Rule 8.2. Emergency or ex parte motions.**

(A) *Emergency relief.* Any motion that requests a ruling within 48 hours after filing must be plainly marked “EMERGENCY” and accompanied by a certificate stating:

- (1) the reason the motion was not filed earlier;
- (2) the date the underlying order was entered;
- (3) the time and date the order becomes effective;
- (4) the telephone numbers and email addresses for all counsel of record and where available, unrepresented parties; and
- (5) in immigration cases seeking a stay of removal or other emergency relief, the petitioner must attach to the motion a copy of the transcript from the Immigration Judge’s ruling, if relevant, plus copies of the written rulings of the Immigration Judge and Board of Immigration Appeals.

(B) *Ex parte relief.* Any motion that requests the court to act ex parte must include a certificate stating the reason it was not possible to provide notice to the other parties.

(C) *Notice to clerk.* If a motion for emergency relief is contemplated, the movant must notify the clerk in advance at the earliest practical time so that arrangements can be made for timely submission to the court.

(As amended eff. Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2012.)

**Rule 8.3. Applications made to a single judge.**

(A) *Emergency.* Application to a single judge for a stay of a judgment or order pending appeal is disfavored except in an emergency.

(B) *Contents.* An application made to a single judge must demonstrate:

- (1) that notice of the application — including when, where, and to which judge the application was made and the reason for submission to a single judge — was furnished to other parties; or
- (2) what efforts were made to furnish notice to other parties and to contact the office of the clerk, or else the reasons why notice to the parties and/r to the clerk was not required and/r possible.

(As amended eff. Jan. 1, 2012.)

**Rule 9.**

**Release in a criminal case.**

(a) *Release before judgment of conviction.*

(1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court’s order and the court’s statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court’s order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

(3) The court of appeals or one of its judges may order the defendant’s release pending the disposition of the appeal.

(b) *Release after judgment of conviction.* A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.



(c) *Criteria for release.* The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c). (As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### **10th Cir. Rule 9**

#### **Rule 9.1. Expedited proceedings.**

(A) *Release order.* Review of a district court's release order is generally expedited.

(B) *Deferred ruling.* After reasonable notice, the court may defer ruling on a motion for release after a judgment of conviction until it disposes of the underlying direct appeal.

#### **Rule 9.2. Procedures.**

Within 14 days after filing the notice of appeal or motion for release, the party seeking relief must file:

(A) a memorandum containing:

(1) a statement of facts necessary for an understanding of the issues presented;

(2) the grounds for relief, including citation to relevant authorities; and

(3) a statement of the defendant's custodial status and reporting date as relevant — the court must be notified of any change in custody status pending the review process; and

(B) two paper copies of an appendix containing the items noted below (please see the court's CM/ECF User Manual at Sections II(A)(3)(a) and (b), as well as section III(7)), for information regarding electronic filing requirements and procedures for filing paper appendices. It may be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov). The appendix must include:

(1) the district court's docket entries;

(2) all release orders or rulings, together with the reasons (findings and conclusions) given by the magistrate judge or the district judge for the action taken;

(3) any motion filed in the district court on the issue of release, and relevant memoranda in support or opposition;

(4) transcripts of any relevant proceeding if the factual basis for the action taken is questioned;

(5) the judgment of conviction, if review is sought under Fed. R. App. P. 9(b); and

(6) other relevant papers, affidavits, or portions of the district court record.

(As amended eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

#### **Rule 9.3. Response and date at issue.**

Within 14 days after the Rule 9.2 memorandum is filed, the opposing party should file a response or notify the court that a response will not be filed. The matter will be considered at issue after the opposing party has been given reasonable notice and an opportunity to respond.

(As amended eff. Jan. 1, 2010.)

#### **Rule 9.4. Ruling not law of the case.**

Neither of the following constitutes law of the case:

(A) a decision on a motion for release; or

(B) a decision of an appeal from a district court's order on release made before final disposition of the direct criminal appeal.

(As amended eff. Jan. 1, 2012.)

### **Rule 10.**

#### **The record on appeal.**

(a) *Composition of the record on appeal.* The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) *The transcript of proceedings.*

(1) *Appellant's duty to order.* Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

- (i) the order must be in writing;
- (ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and
- (iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) *Unsupported finding or conclusion.* If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) *Partial transcript.* Unless the entire transcript is ordered:

(A) the appellant must — within the 14 days provided in Rule 10(b)(1) — file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) *Payment.* At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) *Statement of the evidence when the proceedings were not recorded or when a transcript is unavailable.* If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) *Agreed statement as the record on appeal.* In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it — together with any additions that the district court may consider necessary to a full presentation of the issues on appeal — must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) *Correction or modification of the record.*

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

- (A) on stipulation of the parties;
- (B) by the district court before or after the record has been forwarded; or
- (C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

### 10th Cir. Rule 10

#### **Rule 10.1. Transcripts.**

##### **(A) *Appropriate transcripts.***

(1) *Appellant's duty.* The appellant must provide all portions of the transcript necessary to give the court a complete and accurate record of the proceedings related to the issues on appeal.

(a) When sufficiency of the evidence is raised, the entire relevant trial transcript must be provided.

(b) When sufficiency of the evidence is not raised, appellant should order only the relevant portions of the transcript and enter into stipulations that will avoid or reduce the need for transcripts.

(c) The appellant must omit the examination of jurors unless specifically at issue on appeal.

(2) *No transcript ordered.* An appellant who does not intend to order a transcript must so state on a transcript order form filed within 14 days after filing the notice of appeal, and must serve a copy on the appellee, the circuit clerk, and the district court clerk.

##### **(B) *Ordering transcripts.***

(1) *Order form.* The transcript order must be made on a form provided by the district court and must comply with Fed. R. App. P. 10(b).

(2) *Reporter's duty.* Upon receipt of a properly completed transcript order, the reporter must:

(a) acknowledge receipt of the order;

(b) state on the form an anticipated date of completion within the time set by the Appellate Transcript Management Plan for the Tenth Circuit (*see* Appendix B); and

(c) promptly send a copy of the order form to the circuit clerk.

(3) *Completion.* A transcript order is not complete until satisfactory financial arrangements have been made with the reporter.

##### **(C) *Preparing, filing, and delivering transcripts.***

(1) *Preparation and filing.* The Appellate Transcript Management Plan for the Tenth Circuit governs the preparation and filing of transcripts for cases on appeal. *See* Appendix B.

(2) *Delivery.* When the transcript is complete, the court reporter must:

(a) deliver the original to the requesting party or to counsel later appointed;

(b) file a certified copy with the district clerk; and

(c) notify the circuit clerk.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

#### **Rule 10.2. Designation of record.**

(A) *Appointed counsel.* In appeals in which any appellant is represented by appointed counsel — including companion and consolidated appeals — a designation of record must be filed in district court, with a copy submitted to the circuit clerk. No Rule 30.1 appendix is required.

(1) *Filing.* The appellant's designation of record must be filed within 14 days after filing the notice of appeal.



(2) *Appellee's designation.* The appellee may file an additional designation within 14 days after service of the appellant's designation.

(B) *Retained counsel.* In appeals in which all appellants are represented by retained counsel — including companion and consolidated appeals — no designation is required and the record will be presented in an appendix prepared by the appellant. *See* Rule 30.1. Retained counsel includes counsel for national, state, or local government entities. If the appellee's counsel is appointed, Rule 30.2(A) also applies.

(C) *Pro se cases.* In pro se cases, no designation is required. The district clerk will prepare a pro se record. *See* Rule 11.2.

(D) *Nonparties.* A district court party who does not intend to file a brief on appeal may not file a designation of record.

(Amended effective January 1, 2003; eff. Jan. 1, 2010; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

### **Rule 10.3. Content of record.**

(A) *Essential items.* Counsel must designate a record on appeal that is sufficient for considering and deciding the appellate issues. Only essential parts of the district court record should be designated for the record on appeal.

(B) *Inadequate record.* The court need not remedy any failure by counsel to designate an adequate record. When the party asserting an issue fails to provide a record sufficient for considering that issue, the court may decline to consider it.

(C) *Required contents.* Every record on appeal forwarded to this court must include:

(1) the last amended complaint and answer, or the indictment or information and any superseding indictment or information;

(2) the final pretrial order;

(3) pertinent written reports and recommendations, findings and conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge, or, if the findings and conclusions were made orally, a copy of the transcript pages reproducing those findings and conclusions;

(4) in a social security appeal, the entire administrative record;

(5) the decision or order from which the appeal is taken;

(6) all jury instructions when an instruction is an issue on appeal, as well as proposed instructions that were refused; when a finding or conclusion is an issue on appeal, proposed findings and conclusions that were refused;

(7) the notice of appeal; and

(8) the district court's docket entries.

(D) *Additional record items.*

(1) *Evidence; instructions.* If an appeal is based on a challenge to the admission or exclusion of evidence, the giving or failure to give a jury instruction, or any other ruling or order, a copy of the pages of the reporter's transcript must be included in the record to show where the evidence, offer of proof, instruction, ruling or order, and any necessary objection are recorded.

(2) *Documents.* When the appeal is from an order disposing of a motion or other pleading, the motion, relevant portions of affidavits, depositions and other supporting documents (including any supporting briefs, memoranda, and points of authority), filed in connection with that motion or pleading, and any responses and replies filed in connection with that motion or pleading must be included in the record.

(3) *Presentence report.* The presentence investigation report must be included if the appeal is from a sentence imposed under 18 U.S.C. § 3742. *See* Rule 11.3(E).

(4) *Other.* Other items, such as trial exhibits and transcript excerpts, must be included when they are relevant to an issue raised on appeal and are referred to in the brief.

(5) *Addendum of exhibits.* Copies of relevant trial exhibits released by the district court before appeal but referred to in a party's brief may be presented in an addendum to the brief. The addendum must not contain originals of exhibits; only one copy may be filed.

(E) *Exclusions.* The following items may not be included in the record on appeal unless they are relevant to the issues on appeal:

- appearances;
- bills of costs;
- briefs, memoranda, and points of authority, except as specified in (D)(2);
- certificates of service;
- depositions, interrogatories, and other discovery matters, unless used as evidence;
- lists of witnesses or exhibits;
- notices and calendars;
- procedural motions or orders;
- returns and acceptances of service;
- subpoenas;
- summonses;
- setting orders;
- unopposed motions granted by the trial court;
- nonfinal pretrial reports or orders; and
- suggestions for voir dire.

(Amended effective January 1, 2003; eff. Jan. 1, 2013.)

### **Rule 11.** **Forwarding the record.**

(a) *Appellant's duty.* An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) *Duties of reporter and district clerk.*

(1) *Reporter's duty to prepare and file a transcript.* The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) *District clerk's duty to forward.* When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) *Retaining the record temporarily in the district court for use in preparing the appeal.* The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) *[Abrogated.]*

(e) *Retaining the record by court order.*

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) *Retaining parts of the record in the district court by stipulation of the parties.* The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) *Record for a preliminary motion in the court of appeals.* If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;
- for release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a supersedeas bond; or
- for any other intermediate order —

the district clerk must send the court of appeals any parts of the record designated by any party.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### 10th Cir. Rule 11

#### **Rule 11.1. Record retained in district court.**

In appeals in which an appendix is required by Rule 30, the district court clerk will notify the parties and the circuit clerk when the record is complete (i.e., when the appellant certifies that no transcript will be ordered or the transcript is filed). The appellant must file an appendix when the appellant's opening brief is filed. *See* Rules 30 and 31.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2013.)

#### **Rule 11.2. Record transmitted to court of appeals.**

(A) *Record.* In a pro se appeal and in an appeal in which an appellant is represented by appointed counsel, the district court clerk must forward the record to the circuit clerk as required by Fed. R. App. P. 11(b). The record must include any transcript that has been filed for the appeal.

(B) *Original file.* In a pro se appeal in which the district court denies the appellant permission to proceed without prepayment of fees or denies a certificate of appealability, the district clerk may transmit the district court's "original file" to the circuit clerk.

(Amended effective January 1, 2003; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2013.)

#### **Rule 11.3. Form of record.**

In those instances where the record, or portions of the record, are not available electronically, assembly of a paper record must be as follows:

(A) *Fastening; cover.* The record must be fastened together securely in one or more volumes. Each volume must have a cover page in the following form:

RECORD ON APPEAL  
UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

Court of Appeals No. \_\_\_\_\_

District Court No. \_\_\_\_\_



---

Plaintiff(s)-Appellant(s) or Appellee(s)

vs.

---

Defendant(s)-Appellant(s) or Appellee(s)

### VOLUME

(B) *Index.* The record on appeal, other than the reporter's transcripts, need not be paginated. The first page of each document must bear a numbered index tab. A copy of the district court's docket sheet, which must appear immediately after the cover page of the first volume, will serve as the index.

(C) *Transcript.* Each volume of the reporter's transcript must be a separate volume of the record and must contain the complete reporter's index and reporter's pagination. The transcript must be paginated consecutively through all volumes. A heading — a brief description listing, for example, the last name of the witness and the type of examination — must appear on each page. The pages of each volume of the reporter's transcript must be securely fastened at the left side if in paper form. *See generally Volume 6, Guide to Judiciary Policy — Court Reporting § 520.*

(D) *Sealed materials.*

(1) When materials sealed by district court order are forwarded as part of the record, the district clerk must:

- (a) separate the sealed materials from other portions of the record;
- (b) enclose them in an envelope clearly marked "Sealed" if forwarded in hard copy or identify them as sealed in a separate electronic volume when transmitted; and
- (c) affix a copy of the sealing order to the outside of the envelope if the sealed material is not available electronically.

(E) *Presentence investigation reports.* Presentence reports are confidential. If a presentence report needs to be forwarded as part of the record on appeal, the district clerk must treat it like sealed material under (D).

(As amended eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

### Rule 11.4. Electronic submission.

When the district court clerk submits a record electronically, the various volumes shall be forwarded as separate *pdf* files. Pleadings must be bookmarked and sealed volumes shall be identified as such.

(Added eff. Jan. 1, 2009; amended eff. Jan. 1, 2010; eff. Jan. 1, 2013.)

### Rule 12.

#### Docketing the appeal; filing a representation statement; filing the record.

(a) *Docketing the appeal.* Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) *Filing a representation statement.* Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) *Filing the record, partial record, or certificate.* Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

### 10th Cir. Rule 12

No local rule.

**Rule 12.1.****Remand after an indicative ruling by the district court on a motion for relief that is barred by a pending appeal.**

(a) *Notice to the court of appeals.* If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) *Remand after an indicative ruling.* If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

(Eff. Dec. 1, 2009.)

**10th Cir. Rule 12.1**

No local rule.

**TITLE III. REVIEW OF A DECISION OF THE UNITED STATES TAX COURT****Rule 13.****Review of a decision of the tax court.**

(a) *How obtained; time for filing notice of appeal.*

(1) Review of a decision of the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(2) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(b) *Notice of appeal; how filed.* The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(c) *Contents of the notice of appeal; service; effect of filing and service.* Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) *The record on appeal; forwarding; filing.*

(1) An appeal from the Tax Court is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals. References in those rules and in Rule 3 to the district court and district clerk are to be read as referring to the Tax Court and its clerk.

(2) If an appeal from a Tax Court decision is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 13**

No local rule.

**Rule 14.****Applicability of other rules to the review of a tax court decision.**

All provisions of these rules, except Rules 4-9, 15-20, and 22-23, apply to the review of a Tax Court decision.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 14****Rule 14.1. Tenth Circuit rules apply.**

These rules — except Rules 8, 9, 10, 11.1, 11.2, 15, 17, 20, 22, and 30 — apply to review of a decision of the Tax Court. As used in any applicable Tenth Circuit rule, the term “district court” includes the Tax Court, the term “district judge” includes a judge of the Tax Court, and the term “district clerk” includes the Tax Court clerk.

**TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER****Rule 15.****Review or enforcement of an agency order — How obtained; Intervention.****(a) *Petition for review; joint petition.***

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition — using such terms as “et al.,” “petitioners,” or “respondents” does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule “agency” includes an agency, board, commission, or officer; “petition for review” includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

**(b) *Application or cross-application to enforce an order; answer; default.***

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) *Service of the petition or application.* The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.



(d) *Intervention.* Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion — or other notice of intervention authorized by statute — must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) *Payment of fees.* When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.  
(As amended May 7, 2009, eff. Dec. 1, 2009.)

### 10th Cir. Rule 15

#### **Rule 15.1. Docketing statement.**

Within 14 days after filing a petition for review or an application for enforcement, the filing party must file a docketing statement on a form provided by the court. *See* Appendix A, 10th Cir. Form 1.  
(As amended eff. Jan. 1, 2008; eff. Jan. 1, 2010.)

#### **Rule 15.2. Intervention.**

(A) *Notice of intervention by a party.* A party to an agency proceeding may intervene in a review of that proceeding by filing a notice of intervention in the court. The notice must state whether the party wishes to intervene as a petitioner in opposition to the agency order or as a respondent in support of the order.

(B) *Motion to intervene.*

(1) *Content.* In addition to the requirements of Fed. R. App. P. 15(d), a nonparty motion must state the reasons why the parties cannot adequately protect the interest asserted.

(2) *Opposition.* Opposition to a motion to intervene must be filed within 14 days after the motion is served.

(As amended eff. Jan. 1, 2010.)

### **Rule 15.1.**

#### **Briefs and oral argument in a National Labor Relations Board proceeding.**

In either an enforcement of a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### 10th Cir. Rule 15.1

No local rule.

### **Rule 16.**

#### **The record on review or enforcement.**

(a) *Composition of the record.* The record on review or enforcement of an agency order consists of:

- (1) the order involved;
- (2) any findings or report on which it is based; and
- (3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) *Omissions from or misstatements in the record.* The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 16**

No local rule.

**Rule 17.  
Filing the record.**

(a) *Agency to file; time for filing; notice of filing.* The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) *Filing — What constitutes.*

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 17****Rule 17.1. Time for filing.**

If a certified list is filed instead of the record, the entire record, or the parts designated by the parties, must be filed within 21 days after the respondent's brief is served.

**Rule 17.2. Form.**

If a hard copy of the record is filed, it must be assembled as required by Rule 11.3 and electronic copies forwarded per Rule 11.4 unless other arrangements are made with the clerk.

(As amended eff. Jan. 1, 2009; eff. Jan. 1, 2010.)

**Rule 18.  
Stay pending review.**

(a) *Motion for a stay.*

(1) *Initial motion before the agency.* A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) *Motion in the court of appeals.* A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) *Bond.* The court may condition relief on the filing of a bond or other appropriate security.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### **10th Cir. Rule 18**

#### **Rule 18.1. Applications for stay.**

Applications for stay must comply with Rule 8.

### **Rule 19.**

#### **Settlement of a judgment enforcing an agency order in part.**

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 10 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

### **10th Cir. Rule 19**

No local rule.

### **Rule 20.**

#### **Applicability of rules to the review or enforcement of an agency order.**

All provisions of these rules, except Rules 3-14 and 22-23, apply to the review or enforcement of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### **10th Cir. Rule 20**

#### **Rule 20.1. Tenth Circuit rules apply.**

These rules — except Rules 3, 9, 10, 11.1, 11.2, 14, and 22 — apply to review or enforcement of agency orders. As used in any Tenth Circuit rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders, and the term "district judge" includes an administrative law judge or hearing officer.

## **TITLE V. EXTRAORDINARY WRITS**

### **Rule 21.**

#### **Writs of mandamus and prohibition, and other extraordinary writs.**

(a) *Mandamus or prohibition to a court: petition, filing, service, and docketing.*

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court



judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) (A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition;

and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) *Denial; order directing answer; briefs; precedence.*

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) *Other extraordinary writs.* An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) *Form of papers; number of copies.* All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998, Apr. 29, 2002, eff. Dec. 1, 2002.)

### 10th Cir. Rule 21

#### **Rule 21.1. Fees.**

The fee is due when the petition is filed. *See* 28 U.S.C. § 1913 note (Judicial Conference Schedule of Fees).

(As amended eff. Jan. 1, 2013.)

## **TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS**

### **Rule 22.**

#### **Habeas corpus and Section 2255 proceedings.**

(a) *Application for the original writ.* An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application.

(b) *Certificate of appealability.*

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255 (if any), along with the notice of appeal and the file of the district court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

### 10th Cir. Rule 22

#### **Rule 22.1. Certificate of appealability.**

(A) *Required form.* Although a notice of appeal constitutes a request for a certificate of appealability, the appellant must also file a brief. The circuit clerk will provide pro se appellants a form for this purpose which serves as both a brief and a request for a certificate.

(B) *Briefing.* Respondents-appellees shall not file a brief until requested to do so by this court.

(As amended eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2012.)

#### **Rule 22.2. Procedures in death penalty cases.**

##### **(A) General procedures.**

(1) Upon receipt of the docketing statement in capital cases arising under 28 U.S.C. § 2254 or any federal criminal statute, the clerk shall enter a case management order directing the parties to schedule a video or phone conference with the chief deputy clerk or other designated court representative. Lead counsel for both parties must be available for the conference.

(2) At the designated time, counsel and the court shall address matters related to issues to be appealed, page limitations, record issues, and any other procedural matters which the parties believe are significant in the appeal. At the time of the conference, counsel shall be prepared to discuss and adopt a briefing schedule. In addition, where appropriate, the court may address issues regarding issuance of a certificate of appealability.

(3) The court will issue a scheduling order following the conference. In that order, the court will set all appropriate deadlines. Motions to amend those deadlines are strongly discouraged and the court will deviate from the scheduling order only under extreme circumstances.

##### **(B) Cases with a scheduled execution date.**

(1) *Notice of execution date.* When a petitioner has a scheduled execution date at the time the notice of appeal is filed, a separate notice regarding the date must be filed with the circuit clerk. The notice must be filed immediately upon case opening. The notice must:

(a) certify the existence of a death sentence and state the execution date; and

(b) list any previous related cases in federal court and any related cases pending in any other court, including state courts.

(2) *Immediate communication upon filing in district court.* The district clerk must notify the circuit clerk immediately upon the filing of any new habeas petition, or any other new proceeding, which includes a scheduled execution date for the plaintiff/petitioner. Counsel for the petitioner must also notify this court immediately if any



new proceeding is filed in the district court involving a case with a scheduled execution date.

(C) *Motion for stay.*

(1) *Initial motion in district court.* A motion for a stay of execution must ordinarily be made in the district court first. *See* Fed. R. App. P. 8(a)(2)(A)(i).

(2) *Lodged with court of appeals.* In anticipation of jurisdiction, a motion for stay and supporting documents may be forwarded to the circuit clerk before a notice of appeal is filed. Counsel should also contact the circuit clerk via phone as soon as is feasible regarding anticipated motions for stay. Written materials may be forwarded electronically to 10th\_Circuit\_Clerk@ca10.uscourts.gov.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

**Rule 22.3. Other rules applicable.**

All other Tenth Circuit rules apply in death penalty cases unless they are inconsistent with this rule.

**Rule 23.**

**Custody or release of a prisoner in a habeas corpus proceeding.**

(a) *Transfer of custody pending review.* Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) *Detention or release pending review of decision not to release.* While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) *Release pending review of decision ordering release.* While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.

(d) *Modification of the initial order on custody.* An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 23**

No local rule.

**Rule 24.**

**Proceeding in forma pauperis.**

(a) *Leave to proceed in forma pauperis.*

(1) *Motion in the district court.* Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and



(C) states the issues that the party intends to present on appeal.

(2) *Action on the motion.* If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) *Prior approval.* A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court — before or after the notice of appeal is filed — certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and state in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) *Notice of district court's denial.* The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) *Motion in the court of appeals.* A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) *Leave to proceed in forma pauperis on appeal or review of an administrative-agency proceeding.* When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).

(c) *Leave to use original record.* A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

### **10th Cir. Rule 24**

#### **Rule 24.1. Prison Litigation Reform Act.**

All prisoners bringing civil actions or appeals must pay the full amount of filing and docketing fees. 28 U.S.C. § 1915(b)(1). Consequently, if a prisoner tenders less than full fees when a notice of appeal is filed, the district court shall obtain sufficient information to determine the prisoner's eligibility to make partial payments of the full fee, and, if the prisoner is eligible, assess a partial filing fee under the Act. If the prisoner has sufficient funds, the district court shall assess the entire fee immediately. A prisoner who was permitted to proceed in forma pauperis in the district court is not automatically entitled to proceed on appeal without prepayment of full fees, but must file a motion specifically seeking such permission. The partial payment determination must take place regardless of whether the prisoner's status was examined at the time the complaint or other pleading was submitted to the district court. The appeal should be processed and submitted to this court in the normal course, as required by Federal Rule of Appellate Procedure 3(d), without waiting for the determination of the prisoner's eligibility for making partial payments. When the district court makes its determination, it shall enter an order and forward a copy to this court. If the in forma pauperis application reveals the eligible prisoner has no assets and no means to make an initial partial payment, 28 U.S.C. § 1915(b)(4), the district court's order must reflect that finding.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

**Rule 24.2. Duty of prisoner appellant.**

The appellant must authorize the custodian to deduct payments from the institutional account, and the custodian shall pay the assessment. Notice must be given to this court if the prisoner does not provide the information required under the Act or does not authorize payment from his or her institutional account. Filing fee payments shall be made to the clerk of the district court pursuant to Fed. R. App. P. 3(e).

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2011.)

**TITLE VII. GENERAL PROVISIONS****Rule 25.****Filing and service.****(a) Filing.**

(1) *Filing with the clerk.* A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) *Filing: method and timeliness.*

(A) *In general.* Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) *A brief or appendix.* A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(C) *Inmate filing.* A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) *Electronic filing.* A court of appeals may by local rule permit or require papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A local rule may require filing by electronic means only if reasonable exceptions are allowed. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) *Filing a motion with a judge.* If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) *Clerk's refusal of documents.* The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) *Privacy protection.* An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(b) *Service of all papers required.* Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) *Manner of service.*

(1) Service may be any of the following:



(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(1)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) *Proof of service.*

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) *Number of copies.* When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case. (As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007; May 7, 2009, eff. Dec. 1, 2009.)

**Committee Note.** — Subdivision (a)(2)(D). Amended Rule 25(a)(2)(D) acknowledges that many courts have required electronic filing by means of a standing order, procedures manual, or local rule. These local practices reflect the advantages that courts and most litigants realize from electronic filing. Courts that mandate electronic filing recognize the need to make exceptions when requiring electronic filing imposes a hardship on a party. Under Rule 25(a)(2)(D), a local rule that requires electronic filing must include reasonable exceptions, but Rule 25(a)(2)(D) does not define the scope of those exceptions. Experience with the local rules that have been adopted and that will emerge will aid in drafting new local rules and will facilitate gradual convergence on uniform exceptions, whether in local rules or in an amended Rule 25(a)(2)(D).

A local rule may require that both electronic and “hard” copies of a paper be filed. Nothing in the last sentence of Rule 25(a)(2)(D) is meant to imply otherwise.

Subdivision (a)(5). Section 205(c)(3)(A)(i) of the E-Government Act of 2002 (Public Law 107-347, as amended by Public Law 108-281) requires that the rules of practice and procedure be amended “to protect privacy and security concerns relating to electronic filing of documents and the public availability . . . of documents filed electronically.” In response to that directive, the Federal Rules of Bankruptcy, Civil, and Criminal Procedure have been amended, not merely to address the privacy and security concerns raised by documents that are filed electronically, but also to address similar concerns raised by documents that are already filed in paper form. See Fed. R. Bankr. P. 9037; Fed. R. Civ. P. 5.2; and Fed. R. Crim. P. 49.1.

Appellate Rule 25(a)(5) requires that, in cases that arise on appeal from a district court, bankruptcy appellate panel, or bankruptcy court, the privacy rule that applied to the case below will continue to apply to the case on appeal. With one exception, all other cases — such as cases involving the review or enforcement of an agency order, the review of a decision of the tax court, or the consideration of a petition for an extraordinary writ — will



be governed by Civil Rule 5.2. The only exception is when an extraordinary writ is sought in a criminal case — that is, a case in which the related trial-court proceeding is governed by Criminal Rule 49.1. In such a case, Criminal Rule 49.1 will govern in the court of appeals as well.

### **10th Cir. Rule 25**

#### **Rule 25.1. File stamped copies of papers.**

For pro se parties submitting hard copies, file stamped copies of papers filed with the court will be sent to the filer only if that party provides necessary copies and a self-addressed envelope bearing sufficient postage.  
(As amended eff. Jan. 1, 2010.)

#### **Rule 25.2. Papers subject to being stricken.**

If papers submitted to the circuit clerk do not comply with the Federal Rules of Appellate Procedure and these rules, they may be stricken.  
(As amended eff. Jan. 1, 2010.)

#### **Rule 25.3. Electronic filing.**

As authorized by Fed. R. App. P. 25(a)(2)(D), the court has converted to *mandatory* electronic case filing (ECF) for all counsel of record. All pleadings filed electronically shall be submitted in compliance with the procedures adopted by the court and set forth in the CM/ECF User Manual at Section II. Consistent with Rule 25(a)(2)(D), any party may move to be exempt from electronic filing requirements. Copies of, and information regarding, the court's User Manual and training materials may be obtained by contacting the office of the clerk or by visiting the court's website at [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).  
(As amended Jan. 1, 2007; eff. Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

#### **Rule 25.4. Electronic service.**

In accordance with Fed. R. App. P. 25(c)(2), filers may use the court's ECF system to serve pleadings (please see [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov) to view the court's CM/ECF User Manual regarding electronic filing — in particular, please see section II(D) for information regarding service requirements). Filers must, however, continue to include a certificate of service with all papers and materials submitted, and shall identify in the certificate the method of service used. The filer is responsible for making service in another manner on persons entitled to notice who are not electronic filers in the case.  
(Added eff. Jan. 1, 2009; amended eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

#### **Rule 25.5. Privacy redaction requirements.**

All filers are required to follow the privacy and redaction requirements of Fed. R. App. P. 25(a)(5), as well as the applicable federal rules of civil procedure, criminal procedure, and the relevant bankruptcy rule. *See* Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. Bankr. P. 9037. Required redactions include social security numbers and tax identification numbers (filers may disclose the last four digits of a social security or tax identification number), birth dates (use year of birth only), minors' names (initials may be used), and financial account numbers (except those identifying property allegedly subject to forfeiture in a forfeiture proceeding). It is the sole responsibility of the filer to redact pleadings appropriately.  
(Added eff. Jan. 1, 2011.)

### **Rule 26.**

#### **Computing and extending time.**

(a) *Computing time.* The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period stated in days or a longer unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period stated in hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the clerk's office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last day" defined.* Unless a different time is set by statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filings under Rules 4(c)(1), 25(a)(2)(B), and 25(a)(2)(C) — and filing by mail under Rule 13(b) — at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next day" defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal holiday" defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the following is located: the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) *Extending time.* For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) *Additional time after service.* When a party may or must act within a specified time after service, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. For

purposes of this Rule 26(c), a paper that is served electronically is not treated as delivered on the date of service stated in the proof of service.

(As amended Apr. 29, 2002, Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009.)

**10th Cir. Rule 26**

No local rule.

**Rule 26.1.**

**Corporate disclosure statement.**

(a) *Who must file.* Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) *Time for filing; supplemental filing.* A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

(c) *Number of copies.* If the Rule 26.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case.  
(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

**10th Cir. Rule 26.1**

No local rule.

**Rule 27.**

**Motions.**

(a) *In general.*

(1) *Application for relief.* An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) *Contents of a motion.*

(A) *Grounds and relief sought.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) *Accompanying documents.*

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) *Documents barred or not required.*

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) *Response.*

(A) *Time to file.* Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.



(B) *Request for affirmative relief.* A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) *Reply to response.* Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) *Disposition of a motion for a procedural order.* The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) *Power of a single judge to entertain a motion.* A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) *Form of papers; page limits; and number of copies.*

(1) *Format.*

(A) *Reproduction.* A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) *Cover.* A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) *Binding.* The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) *Paper size, line spacing, and margins.* The document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) *Typeface and type styles.* The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) *Page limits.* A motion or a response to a motion must not exceed 20 pages, exclusive of the corporate disclosure statement and accompanying documents authorized by Rule 27(a)(2)(B), unless the court permits or directs otherwise. A reply to a response must not exceed 10 pages.

(3) *Number of copies.* An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) *Oral argument.* A motion will be decided without oral argument unless the court orders otherwise.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998, Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009.)

### 10th Cir. Rule 27

#### **Rule 27.1. Certification of questions of state law.**

(A) *Certification; abatement.* When state law permits, this court may:

(1) certify a question arising under state law to that state's highest court according to that court's rules; and

(2) stay the case in this court to await the state court's decision of the certified question.

(B) *Motion.* The court may certify on its own or on a party's motion.

(C) *Time to file.* A motion to certify should be filed at the same time as, but separately from, the moving party's brief on the merits.

(D) *Response; time to file.* A response may be filed at the same time as the answer or reply brief or within 14 days after the motion is served.

(E) *When considered.* A motion to certify is ordinarily referred to the panel of judges assigned to decide the appeal on the merits and is considered at the same time as the arguments on the merits.

(As amended eff. Jan. 1, 2010.)

### **Rule 27.2. Summary disposition on motion by a party or the court.**

(A) *Motions to dismiss or affirm.*

(1) *Types.* A party may file only the following dispositive motions:

(a) a motion to dismiss the entire case for lack of appellate jurisdiction or for any other reason a dismissal is permitted by statute, the Federal Rules of Appellate Procedure or these rules;

(b) a motion for summary disposition because of a supervening change of law or mootness;

(c) a motion to remand for additional trial court or administrative proceedings; or

(d) a motion by the government to enforce an appeal waiver.

(2) *Contents.*

(a) The motion must discuss the grounds for the motion.

(b) A motion under (A)(1)(d) must include copies of the plea agreement and copies of transcripts for both the plea hearing and the sentencing hearing.

(3) *Time to file.*

(a) A motion under (A)(1)(a) through (c) should be filed within 14 days after the notice of appeal is filed, unless good cause is shown.

(b) A motion under (A)(1)(d) must be filed within 20 days after:

(i) the district court's notice, pursuant to 10th Cir. R. 11.1, that the record is complete, or;

(ii) the district court's notice that it is transmitting the record pursuant to 10th Cir. R. 11.2.

(c) Failure to file a timely motion to enforce an appeal waiver does not preclude a party from raising the issue in a merits brief.

(4) *Time to respond.* If a party chooses to respond to a motion, the response must be filed within 14 days after the motion is served.

(B) *Action by the court.* After giving notice to the parties, the court may summarily dispose of an appeal or a petition for review or enforcement.

(1) *Memorandum briefs.* The court may require parties to file memorandum briefs addressing specific dispositive issues.

(2) *Contents.* A memorandum brief need not contain an index or a table of cases, but it must include a list of prior and related appeals.

(3) *Submission.* A case with memorandum briefs will be considered without oral argument, unless a panel member decides that oral argument is needed. *See* 10th Cir. R. 34.1(G).

(C) *Briefing stopped.* The filing of a motion under (A) or notice of action by the court under (B) suspends the briefing schedule unless the court orders otherwise.

(As amended Jan. 1, 2008; eff. Jan. 1, 2010; eff. Jan. 1, 2013.)

### **Rule 27.3. Clerk authorized to act on certain motions; required recitation; requirements regarding disclosure of opposing party's position.**

(A) *Motions.* Subject to review by the court, the clerk is authorized to act for the court on any of the following motions:

(1) to extend time to file a pleading or perform an act required by Fed. R. App. P. 10, 11, 12, 13(d), 17, 24, 27, 29, 30, 31, 39, or 40, or by 10th Cir. R. 3, 10, 11, 14, 15, 17, 20, 24, 27, 30, 31, 40, or 46;

(2) to correct a brief or pleading;



(3) to supplement or correct records or to incorporate records from previous appeals;

(4) to consolidate appeals;

(5) to substitute parties;

(6) to appear as *amicus curiae*;

(7) to expedite or continue cases;

(8) to withdraw or substitute counsel in a civil case or, after compliance with 10th Cir. R. 46.4, in a criminal case;

(9) by appellant to dismiss an appeal (in criminal and postconviction cases, see 10th Cir. R. 46.3(B)), or a stipulation for dismissal, with or without an agreement on payment of costs (if an appeal is dismissed, the clerk may issue a copy of the dismissal order as the mandate);

(10) for extension of time to file a petition for rehearing, limited to one extension of 15 days or less;

(11) a motion under 10th Cir. R. 30.2 or 30.3; or

(12) any other motion the court may authorize.

(B) *Opposed motions.* If any motion listed in (A) is opposed, the clerk will submit the matter to the court.

(C) *Disclosure of opponent's position.* Every motion filed under Fed. R. App. P. 27 and this rule must contain a statement of the opposing party's position on the relief requested or why the moving party was unable to learn the opposing party's position. In this regard, parties should make reasonable efforts to contact opposing parties well in advance of filing a motion. Motions filed in direct criminal appeals or post-conviction proceedings to withdraw, appoint, or substitute counsel need not state opposing counsel's position. (As amended eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

#### **Rule 27.4. Motions to extend time.**

(A) *Disfavored.* Extensions of time to file briefs are disfavored.

(B) *Content.* A motion to extend time must:

(1) state the brief's due date;

(2) contain a statement of the opposing party's position on the relief requested or why the moving party was unable to learn the opposing party's position. In this regard, parties should make reasonable efforts to contact opposing parties well in advance of filing a motion; and

(3) list any such prior motion filed and the court's action on it.

(C) *Requirements.* The motion must establish that it will not be possible to file the brief on time, even if the party exercises due diligence and gives priority to preparing the brief.

(1) All factual statements must be set forth with specificity.

(2) Generalities — such as assertions that the purpose of the motion is not for delay and that counsel is too busy — are not sufficient.

(3) If the reason for the extension is that the transcript is not available, the motion must show that the transcript was timely ordered and paid for, or must explain why not.

(D) *Reasons.* Reasons that may merit consideration are that:

(1) other litigation presents a scheduling conflict, in which case the motion must:

(a) identify the litigation by caption, number, and court;

(b) describe the action taken in the other litigation on a request for continuance or deferment;

(c) state reasons why the other litigation should receive priority over the case in which the motion is filed;

(d) state reasons why other associated counsel cannot prepare the brief for timely filing or relieve movant's counsel of the other litigation; and

(e) recite any other relevant circumstances;

(2) the case is so complex that an adequate brief cannot reasonably be prepared by the due date, in which case the motion must state facts demonstrating the complexity; and



(3) counsel will suffer extreme hardship, in which case the motion must state the nature of the hardship.

(E) *Criminal cases.* A motion to extend time to file a brief in a criminal case must also state the custody status of the defendant.

(F) *Time to file.* A motion to extend time to file a brief must be filed at least 5 days before the brief's due date, unless the reasons for the request did not exist or were unknown earlier.

(As amended eff. Jan. 1, 2009.)

### **Rule 27.5. Orders.**

(A) *Panel judge.* When a case has been assigned, a designated panel judge may issue any interlocutory order and act on any motion filed under Fed. R. App. P. 8, 9(b), 22(a), or 22(b).

(B) *Procedural orders.* Orders are entered when the clerk docket them. The docket entry will:

- (1) describe briefly and succinctly the nature of the order; and
- (2) either be entered by the clerk or state the name of the judge or judges directing its entry.

### **Rule 28.**

#### **Briefs.**

(a) *Appellant's brief.* The appellant's brief must contain, under appropriate headings and in the order indicated:

- (1) a corporate disclosure statement if required by Rule 26.1;
- (2) a table of contents, with page references;
- (3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;
- (4) a jurisdictional statement, including:
  - (A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;
  - (C) the filing dates establishing the timeliness of the appeal or petition for review; and
  - (D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;
- (5) a statement of the issues presented for review;
- (6) a statement of the case briefly indicating the nature of the case, the course of proceedings, and the disposition below;
- (7) a statement of facts relevant to the issues submitted for review with appropriate references to the record (Rule 28(e));
- (8) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;
- (9) the argument, which must contain:
  - (A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and
  - (B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);
- (10) a short conclusion stating the precise relief sought; and
- (11) the certificate of compliance, if required by Rule 32(a)(7).

(b) *Appellee's brief.* The appellee's brief must conform to the requirements of Rule 28(a)(1)-(9) and (11), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

- (1) the jurisdictional statement;
- (2) the statement of the issues;
- (3) the statement of the case;
- (4) the statement of the facts; and
- (5) the statement of the standard of review.

(c) *Reply brief.* The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the reply brief where they are cited.

(d) *References to parties.* In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) *References to the record.* References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for Judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) *Reproduction of statutes, rules, regulations, etc.* If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) [Reserved].

(h) [Reserved].

(i) *Briefs in a case involving multiple appellants or appellees.* In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) *Citation of supplemental authorities.* If pertinent and significant authorities come to a party's attention after the party's brief has been filed — or after oral argument but before decision — a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

### 10th Cir. Rule 28

#### **Rule 28.1. References to appendix or record.**

(A) *Appendix.* References to the appendix should be by page number (e.g., Aplt. App. at 27, or Aplee. Supp. App. at 14).

(B) *Record.* In cases without an appendix, references to the record should be through identification of the district court document (i.e., the title), the district court document or docket number, and then the page number within that document (e.g., *Plaintiff's Motion In*

*Limine* dated 4/5/1999, docket number 32, at 6). References to the transcript should be by page number. Counsel are encouraged to include a footnote in the briefs at the point of the first record citation to confirm the citation convention.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2011.)

### **Rule 28.2. Additional requirements.**

(A) *Appellant's brief.* In addition to all other requirements of the Federal Rules of Appellate Procedure and these rules, the appellant's brief must include as an attachment the following (even though they are also included in the appendix):

(1) copies of all pertinent written findings, conclusions, opinions, or orders of a district judge, bankruptcy judge, or magistrate judge (if the district court adopts a magistrate's report and recommendation, that report must also be included);

(2) if any judicial pronouncement listed in (1) is oral, a copy of the transcript pages;

(3) in social security cases, copies of the decisions of the administrative law judge and the appeals council; and

(4) in immigration cases, a copy of the transcript from the Immigration Judge's oral ruling, plus copies of the written rulings of the Immigration Judge and the Board of Immigration Appeals.

(B) *Appellee's brief.* If the appellant's brief fails to include all the rulings required by (A), the appellee's brief must include them.

(C) *All principal briefs.*

(1) *Statement of related cases.* At the end of the table of cases, the first brief filed by each party must list all prior or related appeals, with appropriate citations, or a statement that there are no prior or related appeals.

(2) *Record references.* For each issue raised on appeal, all briefs must cite the precise reference in the record where the issue was raised and ruled on.

(3) *Particular record references.* Briefs must cite the precise reference in the record where a required objection was made and ruled on, if the appeal is based on:

(a) a failure to admit or exclude evidence;

(b) the giving of or refusal to give a particular jury instruction; or

(c) any other act or ruling for which a party must record an objection to preserve the right to appeal.

(4) *Oral argument statement.* The front cover of each party's first brief must state whether oral argument is requested. If argument is requested, a statement of the reasons why argument is necessary must follow the brief's conclusion.

(5) *Name of court and judge.* The front cover of each brief must contain the name of the court and the judge whose judgment is being appealed.

(6) *Glossary.* All briefs containing acronyms or abbreviations not in common use (other than names of parties) must include a Glossary on a page immediately following the Table of Cases.

(As amended eff. Jan. 1, 2010; eff. Jan. 1, 2012.)

### **Rule 28.3. Motions to exceed word count disfavored.**

Motions to exceed the word count will be denied unless extraordinary and compelling circumstances can be shown. A motion filed within 14 days of the brief's due date must show why earlier filing was not possible.

(As amended eff. Jan. 1, 2010.)

### **Rule 28.4. Incorporating by reference disapproved.**

Incorporating by reference portions of lower court or agency briefs or pleadings is disapproved and does not satisfy the requirements of Fed. R. App. P. 28(a) and (b).

(Added effective January 1, 2003.)



**Rule 28.1.**  
**Cross-Appeals.**

(a) *Applicability.* This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this rule.

(b) *Designation of appellant.* The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) *Briefs.* In a case involving a cross-appeal:

(1) *Appellant's principal brief.* The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) *Appellee's principal and response brief.* The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case or a statement of the facts unless the appellee is dissatisfied with the appellant's statement.

(3) *Appellant's response and reply brief.* The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(9) and (11), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

- (A) the jurisdictional statement;
- (B) the statement of the issues;
- (C) the statement of the case;
- (D) the statement of the facts; and
- (E) the statement of the standard of review.

(4) *Appellee's reply brief.* The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and (11) and must be limited to the issues presented by the cross-appeal.

(5) *No further briefs.* Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) *Length.*

(1) *Page limitation.* Unless it complies with Rule 28.1(e)(2) and (3), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) *Type-volume limitation.*

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if:

- (i) it contains no more than 14,000 words; or
- (ii) it uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if:

- (i) it contains no more than 16,500 words; or
- (ii) it uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(3) *Certificate of compliance.* A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

- (f) *Time to serve and file a brief.* Briefs must be served and filed as follows:
- (1) the appellant's principal brief, within 40 days after the record is filed;
  - (2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;
  - (3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and
  - (4) the appellee's reply brief, within 14 days after the appellant's response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005; May 7, 2009, eff. Dec. 1, 2009.)

**10th Cir. Rule 28.1**

No local rule.

**Rule 29.**

**Brief of an amicus curiae.**

(a) *When permitted.* The United States or its officer or agency or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) *Motion for leave to file.* The motion must be accompanied by the proposed brief and state:

- (1) the movant's interest; and
- (2) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) *Contents and form.* An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

- (1) if the amicus is a corporation, a disclosure statement like that required of parties by Rule 26.1;
- (2) a table of contents, with page references;
- (3) a table of authorities — cases (alphabetically arranged), statutes and other authorities — with references to the pages of the brief where they are cited;
- (4) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;
- (5) unless the amicus curiae is one listed in the first sentence of Rule 29(a), a statement that indicates whether:
  - (A) a party's counsel authored the brief in whole or in part;
  - (B) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and
  - (C) a person — other than the amicus curiae, its members, or its counsel — contributed money that was intended to fund preparing or submitting the brief and, if so, identifies each such person;
- (6) an argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review; and
- (7) a certificate of compliance, if required by Rule 32(a)(7).

(d) *Length.* Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(e) *Time for filing.* An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no



later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) *Reply brief.* Except by the court's permission, an amicus curiae may not file a reply brief.

(g) *Oral argument.* An amicus curiae may participate in oral argument only with the court's permission.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 28, 2010, eff. Dec. 1, 2010.)

### 10th Cir. Rule 29

#### **Rule 29.1. Amicus briefs on rehearing.**

The court will receive but not file proposed amicus briefs on rehearing. Filing will be considered shortly before the oral argument on rehearing en banc if granted, or before the grant or denial of panel rehearing. Except by the court's permission, an amicus brief filed at the rehearing stage may be no more than 3,000 words in length and shall include a certification of the word count in conformance with Fed. R. App. P. 32(a)(7)(C). Proposed amicus briefs in support of the petition must be tendered within 7 days from the date the rehearing petition is filed. Proposed amicus briefs in opposition to rehearing are not allowed unless the court has directed that a response be filed. *See* Fed. R. App. P. 40(a)(3). In that event, any proposed amicus brief must be tendered on the due date for the response. (Added effective January 1, 2006; amended eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

### **Rule 30.**

#### **Appendix to the briefs.**

(a) *Appellant's responsibility.*

(1) *Contents of the appendix.* The appellant must prepare and file an appendix to the briefs containing:

- (A) the relevant docket entries in the proceeding below;
- (B) the relevant portions of the pleadings, charge, findings, or opinion;
- (C) the judgment, order, or decision in question; and
- (D) other parts of the record to which the parties wish to direct the court's attention.

(2) *Excluded material.* Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) *Time to file; number of copies.* Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) *All parties' responsibilities.*

(1) *Determining the contents of the appendix.* The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) *Costs of appendix.* Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost.



But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) *Deferred appendix.*

(1) *Deferral until after briefs are filed.* The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) *References to the record.*

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) *Format of the appendix.* The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) *Reproduction of exhibits.* Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) *Appeal on the original record without an appendix.* The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

## 10th Cir. Rule 30

### **Rule 30.1. Appellant's appendix.**

In appeals from a district court, except pro se appeals and appeals in which an appellant is represented by appointed counsel, the record on appeal is retained in the district court. Instead of the Fed. R. App. P. 30(b) appendix, the appellant must file an appendix containing record excerpts. This rule does not apply to appeals from the Tax Court. In pro se appeals, the district court clerk prepares a pro se record. See 10th Cir. R. 10.2(C). In appeals in which an appellant is represented by appointed counsel, the district court clerk prepares a designated record. See 10th Cir. R. 10.2(A).

(A) *Content.*

(1) *Appellant's duty.* The appellant must file an appendix sufficient for considering and deciding the issues on appeal. The requirements of Rule 10.3 for

the contents of a record on appeal apply to appellant's appendix. *See* Rule 10.1(A) (addressing appropriate transcripts).

(2) *Social security cases.* In social security cases, the entire administrative record must be in the appendix. A motion to file a single copy and waive service of the administrative record may be appropriate.

(3) *Court not obliged.* The court need not remedy any failure of counsel to provide an adequate appendix. *See* Rule 10.3(B).

(B) *Multiple appellants.* When multiple appellants are allowed to file separate briefs under Rule 31.3(B), separate appendices may be filed. But counsel must avoid duplication of items included in a previously filed appendix; these items may be adopted by reference. A single agreed appendix is preferred.

(C) *Form.*

(1) *File stamped.* Copies of documents should show the district court's electronic stamp, but they need not be certified.

(2) *Order.* Documents should be arranged in chronological order according to the filing date; other papers such as exhibits and transcript excerpts should be at the end. A copy of the district court's docket entries should always be the first document in the appendix. Where the appendix is large, separate volumes should be created to allow for manageable review of the materials.

(3) *Pagination; index.* With the exception of social security appeals, the appendix must be paginated consecutively. All appendices must include an index of documents, which includes page numbers noting where the documents appear.

(4) *Sealed documents.* Copies of documents under seal in the district court, such as presentence reports, should be filed in a separate volume, under seal.

(D) *Copies for filing and service.* The appellant must file (with the clerk's office) two separately bound hard copies of the appendix with the opening brief. One copy of the appendix must be served on every other party to the appeal. Counsel should review the Court's CM/ECF User Manual at Sections II(A)(3)(b) and III(7) for additional information regarding appendix filing requirements. *See* [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov)

(E) *Order appealed must be submitted with brief.* Filing an appendix does not relieve counsel of the requirements of Rule 28.2(A).

(As amended Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

### **Rule 30.2. Supplemental appendix.**

(A) *Appellee's appendix.*

(1) *Filing.* An appellee who believes that the appellant's appendix omits items that should be included may file a supplemental appendix with the answer brief.

(2) *Appointed counsel.* If all appellants are represented by retained counsel, appointed counsel for an appellee may file a supplemental appendix and apply for reimbursement when the voucher or the statement of hours and expenses is filed.

(B) *No other appendix.* No other appendix may be filed except by order of the court.

### **Rule 30.3. Appendix exemptions.**

(A) *Particular documents.* A party may file a motion to exempt documents from the appendix if:

(1) the documents themselves cannot be readily copied;

(2) essential excerpts of the reporter's transcript are so voluminous that copying is excessively burdensome or costly; or

(3) making 2 copies of the administrative record would be too costly.

(B) *Waiver of requirement.* In pro bono cases, if production of an appendix is too costly for the appellant to bear, the appellant may file a motion to proceed on a record on appeal.

(As amended eff. Jan. 1, 2010.)



**Rule 31.**  
**Serving and filing briefs.**

(a) *Time to serve and file a brief.*

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 14 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) *Number of copies.* Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) *Consequence of failure to file.* If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; May 7, 2009, eff. Dec. 1, 2009.)

**10th Cir. Rule 31**

**Rule 31.1. Opening brief for appellant/petitioner.**

(A) *Appeals from district court.*

(1) *Retained counsel.* When the appellant is required to file an appendix, the appellant's brief and appendix must be filed within 40 days after the date the district court clerk (as required by Rule 11.1) notifies the parties and the circuit clerk that the record is complete for purposes of appeal.

(2) *Appointed counsel; pro se.* In all other cases, appellant's opening brief must be filed and served according to Fed. R. App. P. 31(a).

(B) *Review and enforcement proceedings.* In cases seeking review or enforcement of agency orders, petitioner's opening brief must be filed within 40 days after the date when the certified list is filed or the date when the record is filed, whichever occurs first.

(As amended eff. Jan. 1, 2013.)

**Rule 31.2. Joint briefing in criminal appeals.**

Codefendants in criminal appeals may each file a brief or may join in a single brief. Joint briefs must bear all the appellate case numbers and captions of all appeals. The United States is encouraged to file a single brief.

(As amended eff. Jan. 1, 2013.)

**Rule 31.3. Joint briefing in civil appeals.**

(A) *Multiple parties.* In civil cases involving more than one appellant or appellee, including consolidated cases, all parties on a side (including intervenors) must — to the extent practicable — file a single brief. Where, however, multiple response briefs are filed pursuant to 10th Cir. R. 31.3(B), the appellant may file only one reply except upon motion to the court seeking an exemption.

(B) *Certificate of counsel.* Any brief filed separately by one of multiple parties on a side must contain a certificate plainly stating the reasons why the separate brief is necessary. The only exception to this requirement is if the only other party on a side filing separately is a government entity under 10th Cir. R. 31.3(D).



(C) *Extension of time.* On motion, the clerk may extend the time for briefing to allow the parties time to coordinate a single brief.

(D) *Government entities exempt.* This rule does not apply to government entities. (As amended Jan. 1, 2008; eff. Jan. 1, 2013.)

#### **Rule 31.4. Extensions.**

Extensions of time to file briefs are disfavored. *See* Rule 27.4.

#### **Rule 31.5. Number of copies.**

Parties (or an amicus) must provide the court with 7 hard copies of all briefs filed. This requirement is in addition to the court's ECF (Electronic Case Filing) requirements. In addition, a party (or amicus) must provide a copy of all submissions to each unrepresented party and all counsel for each separately represented party. Service may be provided electronically through the court's ECF system to attorneys and pro se filers who have received permission to file electronically and who are registered ECF users. For information regarding filing briefs, please see the court's CM/ECF User Manual at Section III(5). The Manual can be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov). (As amended Jan. 1, 2003; eff. Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

### **Rule 32.**

#### **Form of briefs, appendices, and other papers.**

(a) *Form of a brief.*

(1) *Reproduction.*

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; and any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (*see* Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) *Binding.* The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) *Paper size, line spacing, and margins.* The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) *Typeface.* Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10 1/2 characters per inch.

(6) *Type styles.* A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) *Length.*

(A) *Page limitation.* A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) *Type-volume limitation.*

(i) A principal brief is acceptable if:

- it contains no more than 14,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(iii) Headings, footnotes, and quotations count toward the word and line limitations. The corporate disclosure statement, table of contents, table of citations, statement with respect to oral argument, any addendum containing statutes, rules or regulations, and any certificates of counsel do not count toward the limitation.

(C) *Certificate of compliance.*

(i) A brief submitted under Rules 28.1(e)(2) or 32(a)(7)(B) must include a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the brief. The certificate must state either:

- the number of words in the brief; or
- the number of lines of monospaced type in the brief.

(ii) Form 6 in the Appendix of Forms is a suggested form of a certificate of compliance. Use of Form 6 must be regarded as sufficient to meet the requirements of Rules 28.1(e)(3) or 32(a)(7)(C)(i).

(b) *Form of an appendix.* An appendix must comply with Rule 32(a)(1), (2), (3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8 1/2 by 11 inches, and need not lie reasonably flat when opened.

(c) *Form of other papers.*

(1) *Motion.* The form of a motion is governed by Rule 27(d).

(2) *Other papers.* Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) A cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) *Signature.* Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) *Local variation.* Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule. (As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

**Rule 32(a). Font sizes in briefs.**

The court prefers 14-point type as required by Fed. R. App. P. 32(a)(5)(A), but 13-point type is acceptable.

(As amended eff. Dec. 1, 2006; eff. Jan. 1, 2013.)

**Rule 32(b). Word count where glossary included.**

In calculating the number of words and lines that *do not* count toward the word and line limitations, the glossary required by 10th Cir. R. 28(C)(6) may be excluded, in addition to the items listed in Fed. R. App. P. 32(a).

(As added eff. Jan. 1, 2012.)

**Rule 32.1.****Citing judicial dispositions.**

(a) *Citation permitted.* A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as “unpublished,” “not for publication,” “non-precedential,” “not precedent,” or the like; and

(ii) issued on or after January 1, 2007.

(b) *Copies required.* If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

(Eff. Dec. 1, 2006.)

**Committee Note.** — Rule 32.1 is a new rule addressing the citation of judicial opinions, orders, judgments, or other written dispositions that have been designated by a federal court as “unpublished,” “not for publication,” “non-precedential,” “not precedent,” or the like. This Committee Note will refer to these dispositions collectively as “unpublished” opinions.

Rule 32.1 is extremely limited. It does not require any court to issue an unpublished opinion or forbid any court from doing so. It does not dictate the circumstances under which a court may choose to designate an opinion as “unpublished” or specify the procedure that a court must follow in making that determination. It says nothing about what effect a court must give to one of its unpublished opinions or to the unpublished opinions of another court. Rule 32.1 addresses only the citation of federal judicial dispositions that have been designated as “unpublished” or “non-precedential” — whether or not those dispositions have been published in some way or are precedential in some sense.

**Subdivision (a).** Every court of appeals has allowed unpublished opinions to be cited in some circumstances, such as to support a contention of issue preclusion or claim preclusion. But the circuits have differed dramatically with respect to the restrictions that they have placed on the citation of unpublished opinions for their persuasive value. Some circuits have freely permitted such citation, others have discouraged it but permitted it in limited circumstances, and still others have forbidden it altogether.

Rule 32.1(a) is intended to replace these inconsistent standards with one uniform rule. Under Rule 32.1(a), a court of appeals may not prohibit a party from citing an unpublished opinion of a federal court for its persuasive value or for any other reason. In addition, under Rule 32.1(a), a court may not place any restriction on the citation of such opinions. For example, a court may not instruct parties that the citation of unpublished opinions is discouraged, nor may a court forbid parties to cite unpublished opinions when a published opinion addresses the same issue.

Rule 32.1(a) applies only to unpublished opinions issued on or after January 1, 2007. The citation of unpublished opinions issued before January 1, 2007, will continue to be governed by the local rules of the circuits.

**Subdivision (b).** Under Rule 32.1(b), a party who cites an opinion of a federal court must provide a copy of that opinion to the court of appeals and to the other parties, unless



that opinion is available in a publicly accessible electronic database — such as a commercial database maintained by a legal research service or a database maintained by a court. A party who is required under Rule 32.1(b) to provide a copy of an opinion must file and serve the copy with the brief or other paper in which the opinion is cited. Rule 32.1(b) applies to all unpublished opinions, regardless of when they were issued.

### 10th Cir. Rule 32.1

#### **Rule 32.1. Citing judicial dispositions.**

(A) *Precedential value.* The citation of unpublished decisions is permitted to the full extent of the authority found in Fed. R. App. P. 32.1. Unpublished decisions are not precedential, but may be cited for their persuasive value. They may also be cited under the doctrines of law of the case, claim preclusion, and issue preclusion. Citation to unpublished opinions must include an appropriate parenthetical notation. *E.g., United States v. Wilson*, No. 06-2047, 2006 WL 3072766 (10th Cir. Oct. 31, 2006) (unpublished); *United States v. Keeble*, 184 F. App'x 756 (10th Cir. 2006) (unpublished).

(B) *Reference.* If an unpublished decision cited in a brief or other pleading is not available in a publicly accessible electronic database, a copy must be attached to the document when it is filed and must be provided to all other counsel and pro se parties. Where possible, references to unpublished dispositions should include the appropriate electronic citation.

(C) *Retroactive effect.* Parties may cite unpublished decisions issued prior to January 1, 2007, in the same manner and under the same circumstances as are allowed by Fed. R. App. P. 32.1(a)(i) and part (A) of this local rule. (Eff. Dec. 1, 2006; eff. Jan. 1, 2013.)

### **Rule 33. Appeal conferences.**

The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### 10th Cir. Rule 33

#### **Rule 33.1. Mediation conference.**

(A) *Circuit mediation office; purpose of mediation conference.* The circuit mediation office may schedule and conduct mediation conferences in any matter pending before the court. The primary purpose of a conference is to explore settlement, but case management matters may also be addressed.

(B) *Participation of counsel and parties.* Counsel must participate in every scheduled mediation conference and in related discussions. Generally a party may participate but need not unless required by the circuit mediation office. Conferences are conducted by telephone unless the circuit mediation office directs otherwise.

(C) *Preparation of counsel for mediation conference; settlement authority.* Counsel must consult with their clients and obtain as much authority as feasible to settle the case and agree on case management matters in preparing for the initial conference. These obligations continue throughout the mediation process.

(D) *Confidentiality.* Statements made during a conference and in related discussions, and any records of those statements, are confidential and must not be disclosed by anyone (including the circuit mediation office, counsel, or the parties, and their agents or employ-

ees), to anyone not participating in the mediation process. Proceedings under this rule may not be recorded by counsel or the parties.

(E) *Conference order; mediator authority.* The circuit mediation office may cause a judgment or order to be entered controlling the course of the case or the mediation proceedings. The circuit mediation office and its mediators are delegates of this court. Any conference orders or other communications from the circuit mediation office must be treated the same as any other court directive.

(F) *Extensions for ordering transcript or filing brief.* The time allowed by Fed. R. App. P. 10(b)(1) for ordering a transcript and by Rule 31.1 for filing briefs is not automatically tolled pending a conference. If a conference has been scheduled, counsel may contact the circuit mediation office for an extension of time to order a transcript or to file a brief.

(G) *Request for mediation conference by counsel.* Counsel may request a mediation conference by contacting the circuit mediation office. The office will determine whether a conference will be held.

(H) *Sanctions.* The court may impose sanctions if counsel or a party violates this rule or an order entered under it.

(Amended effective January 1, 2003.)

### **Rule 33.2. Counsel conference.**

(A) *Counsel conference required.* Unless a mediation conference under Rule 33.1 has been conducted, counsel must discuss settlement in all civil matters except those involving *pro se* litigants, relief from criminal convictions, and social security appeals.

(B) *Counsel for appellant to initiate.* In cases to which Rule 33.2(A) applies, counsel for the appellant or petitioner must initiate a conference with opposing counsel to fully explore settlement no later than 30 days after the filing of the last brief. The conference may be conducted by telephone.

(C) *Report of counsel conference.* No later than 10 days after the initiation of the conference, counsel for appellant or petitioner must mail a report to the circuit mediation office on a form provided by the clerk. Service of this report upon opposing counsel is not required.

(D) *Confidentiality.* Statements made during a conference, the Rule 33.2(C) report, and related discussions are covered by the confidentiality provision of Rule 33.1(D).

## **Rule 34. Oral argument.**

### **(a) In general.**

(1) *Party's statement.* Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) *Standards.* Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) *Notice of argument; postponement.* The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) *Order and contents of argument.* The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) *Cross-appeals and separate appeals.* If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be



argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) *Nonappearance of a party.* If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) *Submission on briefs.* The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) *Use of physical exhibits at argument; removal.* Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

### 10th Cir. Rule 34

#### **Rule 34.1. Oral argument.**

##### **(A) Responsibilities of counsel.**

(1) *Presence of counsel.* Counsel for each party must be present for oral argument unless excused by the court. The established argument time is allocated by counsel as they see fit.

(2) *Motion to waive oral argument.* After the principal briefs have been filed, a party may file a motion to waive oral argument and to submit a case on the briefs. If filed within 10 days of the scheduled argument date, the motion must show why an earlier filing was not possible.

(3) *Postponement.* Only in extraordinary circumstances will an argument be postponed. Except in an emergency, a motion to postpone must be made more than 10 days before the scheduled argument date.

(4) *Recovery of expenses.* A party prejudiced by the granting of a motion to waive or postpone oral argument filed within 10 days of the scheduled argument date may move for recovery of expenses.

(B) *Joint appeals.* Cases that have been consolidated for briefing purposes will be treated as one case for oral argument. The court does not favor divided arguments on behalf of a single party or multiple parties with the same interests.

(C) *Multiple counsel.* If more than one counsel argues on the same side, the time allowed is divided as they agree. If counsel do not agree, the court will allocate the time.

(D) *Preparation.* In preparing for oral argument, counsel should remember that the judges read the briefs before oral argument.

##### **(E) Recording and transcription.**

(1) *Recording.* Oral arguments are recorded electronically for the use of the court. Parties or others seeking access to the recordings may, however, file a motion to obtain a copy. The motion must state the reason or reasons access is sought. Upon issuance of an order from the hearing panel granting the request, the clerk will be directed to forward the mp3 recording via email.

(2) *Transcription.* Counsel or parties may move or permission to arrange, at their own expense, for a qualified court reporter to be present and to report and transcribe oral argument. A copy of the transcript must be filed with the circuit clerk.

(F) *No oral argument on petitions or motions.* Oral argument on petitions or motions is not ordinarily permitted.

(G) *Submission on briefs.* Except in pro se appeals or when both parties have waived oral argument, the court will advise the parties when a panel decides that oral argument is not necessary. That advisement may be at the time a decision is issued.

(As amended eff. Jan. 1, 2009; eff. Jan. 1, 2011; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)



**Rule 35.****En banc determination.**

(a) *When hearing or rehearing en banc may be ordered.* A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) *Petition for hearing or rehearing en banc.* A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission, a petition for an en banc hearing or rehearing must not exceed 15 pages, excluding material not counted under Rule 32.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) *Time for petition for hearing or rehearing en banc.* A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) *Number of copies.* The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) *Response.* No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) *Call for a vote.* A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 25, 2005, eff. Dec. 1, 2005.)

**10th Cir. Rule 35****Rule 35.1. En banc consideration.**

(A) *Extraordinary procedure.* A request for en banc consideration is disfavored. En banc review is an extraordinary procedure intended to focus the entire court on an issue of exceptional public importance or on a panel decision that conflicts with a decision of the United States Supreme Court or of this court.

(B) *Petition not required.* Filing a petition for rehearing or for rehearing en banc is not required before filing a petition for certiorari in the United States Supreme Court.

(C) *No reconsideration.* The court will not reconsider either the denial of an en banc petition or an en banc disposition.

**Rule 35.2. Request in petition for rehearing.**

(A) *Cover.* The request for en banc consideration must appear on the cover page and in the title of the document requesting rehearing.

(B) *Form of request.* A copy of the opinion or order and judgment that is the subject of a request for rehearing en banc must be attached to every copy of the petition. *See* Rule 40.2.

**Rule 35.3. Untimely request.**

Untimely en banc requests will be transmitted to the full court only upon express order of the hearing panel.

**Rule 35.4. Number of copies.**

A party seeking en banc review must file 18 hard copies of a petition for en banc consideration. This requirement is in addition to all ECF (Electronic Case Filing) requirements. For information regarding filing petitions for rehearing en banc, please see the court's CM/ECF User Manual at section III(11). *See* [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov). A pro se party proceeding without prepayment of fees may file an original and 3 copies. (As amended Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

**Rule 35.5. Who may vote; en banc panel.**

A majority of the active judges who are not disqualified may order rehearing en banc. The en banc panel consists of this court's active judges who are not disqualified and any senior judge who was a member of the hearing panel, unless he or she elects not to sit.

**Rule 35.6. Effect of rehearing en banc.**

The grant of rehearing en banc vacates the judgment, stays the mandate, and restores the case on the docket as a pending appeal. The panel decision is not vacated unless the court so orders.

**Rule 35.7. Matters not considered en banc.**

The en banc court does not consider procedural and interim matters such as stay orders, injunctions pending appeal, appointment of counsel, leave to appeal in forma pauperis, and leave to appeal from a nonfinal order. En banc requests in these matters are referred to the judge or panel that entered the order, in the same manner as a petition for rehearing.

**Rule 36.**

**Entry of judgment; notice.**

(a) *Entry.* A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion-but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) *Notice.* On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

**10th Cir. Rule 36**

**Rule 36.1. Orders and judgments.**

The court does not write opinions in every case. The court may dispose of an appeal or petition without written opinion. Disposition without opinion does not mean that the case is unimportant. It means that the case does not require application of new points of law that would make the decision a valuable precedent.

**Rule 36.2. Publication.**

When the opinion of the district court, an administrative agency, or the Tax Court has been published, this court ordinarily designates its disposition for publication.

(As amended eff. Jan. 1, 2011.)

**Compiler's Notes.** — Former 10th Cir. R. 36.3, regarding citation of unpublished opinions, orders, and judgments, was deleted in 2007. See Fed. R. App. P. 32.1.

### **Rule 37.**

#### **Interest on judgment.**

(a) *When the court affirms.* Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) *When the court reverses.* If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

#### **10th Cir. Rule 37**

No local rule.

### **Rule 38.**

#### **Frivolous appeal — Damages and costs.**

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

#### **10th Cir. Rule 38**

No local rule.

### **Rule 39.**

#### **Costs.**

(a) *Against whom assessed.* The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) *Costs for and against the United States.* Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) *Costs of copies.* Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) *Bill of costs: objections; insertion in mandate.*

(1) A party who wants costs taxed must — within 14 days after entry of judgment — file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must — upon



the circuit clerk's request — add the statement of costs, or any amendment of it, to the mandate.

(e) *Costs on appeal taxable in the district court.* The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

- (1) the preparation and transmission of the record;
- (2) the reporter's transcript, if needed to determine the appeal;
- (3) premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and
- (4) the fee for filing the notice of appeal.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; May 7, 2009, eff. Dec. 1, 2009.)

### 10th Cir. Rule 39

#### **Rule 39.1. Maximum rates.**

Costs of making necessary copies of briefs, appendices, or other records are taxable at the actual cost, but no more than 20 cents per page.

(As amended eff. Jan. 1, 2013.)

### **Rule 40.**

#### **Petition for panel rehearing.**

(a) *Time to file; contents; answer; action by the court if granted.*

(1) *Time.* Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

- (A) the United States;
- (B) a United States agency;
- (C) a United States officer or employee sued in an official capacity; or
- (D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

(2) *Contents.* The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) *Answer.* Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) *Action by the court.* If a petition for panel rehearing is granted, the court may do any of the following:

- (A) make a final disposition of the case without reargument;
- (B) restore the case to the calendar for reargument or resubmission; or
- (C) issue any other appropriate order.

(b) *Form of petition; length.* The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 26, 2011, eff. Dec. 1, 2011.)

### 10th Cir. Rule 40

#### **Rule 40.1. Reasons for petition.**

(A) *Not routine.* A petition for rehearing should not be filed routinely. Rehearing will be granted only if a significant issue has been overlooked or misconstrued by the court.

(B) *Sanctions.* If a petition for rehearing is found to be frivolous, vexatious, or filed for delay, the court may impose a money penalty of up to \$500. Counsel may be required to pay the penalty personally to the opposing party. *See* 28 U.S.C. § 1927. (As amended eff. Jan. 1, 2009.)

#### **Rule 40.2. Form; copies.**

If a petition for panel rehearing is accompanied by a request for rehearing en banc, the petitioner must file 12 hard copies with the clerk, in addition to satisfying all ECF (Electronic Case Filing) requirements. For information regarding filing petitions for panel rehearing and rehearing en banc, please see the CM/ECF User Manual at Section III(11). *See* [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov). A pro se party proceeding without prepayment of fees may file an original and 3 copies. (As amended Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2013.)

#### **Rule 40.3. Successive petitions.**

The court will accept only one petition for rehearing from any party to an appeal. No motion to reconsider the court's ruling on a petition for rehearing may be filed.

### **Rule 41.**

#### **Mandate: Contents; issuance and effective date; stay.**

(a) *Contents.* Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) *When issued.* The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) *Effective date.* The mandate is effective when issued.

(d) *Staying the mandate.*

(1) *On petition for rehearing or motion.* The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) *Pending petition for certiorari.*

(A) A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The stay must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the circuit clerk in writing within the period of the stay. In that case, the stay continues until the Supreme Court's final disposition.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(D) The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002; May 7, 2009, eff. Dec. 1, 2009.)

### **10th Cir. Rule 41**

#### **Rule 41.1. Stay not routinely granted.**

(A) *Criminal cases.* To minimize delay in the administration of justice, after the affirmance of a conviction the mandate will issue and bail will be revoked. A motion to stay the mandate will not be granted unless the court finds that it is not frivolous or filed

merely for delay. The court — or a judge of the hearing panel — may revoke bail before the mandate is issued. *See* 18 U.S.C. § 3141(b).

(B) *Civil cases.* A motion to stay the mandate in a civil case will not be granted unless the court finds there is a substantial possibility that a petition for writ of certiorari would be granted.

#### **Rule 41.2. Motion to recall mandate.**

When a motion to recall the mandate is tendered for filing more than one year after issuance of the mandate, the clerk shall not accept the motion for filing unless the motion states with specificity why it was not filed sooner. The court will not grant the request unless the movant has established good cause for the delay in filing the motion.

(Added effective Jan. 1, 2008.)

### **Rule 42. Voluntary dismissal.**

(a) *Dismissal in the district court.* Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) *Dismissal in the court of appeals.* The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### **10th Cir. Rule 42**

#### **Rule 42.1. Dismissal for failure to prosecute.**

When an appellant fails to comply with the Federal Rules of Appellate Procedure or these rules, the clerk will notify the appellant that the appeal may be dismissed for failure to prosecute unless the failure to comply is remedied within a designated time. If the appellant fails to comply within that time, the clerk will enter an order dismissing the appeal and issue a copy of the order as the mandate. The appellant may not remedy the failure to comply after the appeal is dismissed, unless the court orders otherwise.

(As amended eff. Jan. 1, 2011.)

#### **Rule 42.2. Reinstatement.**

A motion to reinstate an appeal dismissed for failure to prosecute may not be filed unless the failure is remedied or the remedy for the failure accompanies the motion.

### **Rule 43. Substitution of parties.**

#### **(a) *Death of a party.***

(1) *After notice of appeal is filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) *Before notice of appeal is filed — Potential appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative — or, if there is no personal representative, the decedent's attorney of record — may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).



(3) *Before notice of appeal is filed — Potential appellee.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) *Substitution for a reason other than death.* If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) *Public officer: identification; substitution.*

(1) *Identification of party.* A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) *Automatic substitution of officeholder.* When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

#### 10th Cir. Rule 43

No local rule.

### **Rule 44.**

**Case involving a constitutional question when the United States or the relevant state is not a party.**

(a) *Constitutional challenge to federal statute.* If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) *Constitutional challenge to state statute.* If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, eff. Dec. 1, 2002.)

#### 10th Cir. Rule 44

No local rule.

### **Rule 45. Clerk's duties.**

(a) *General provisions.*

(1) *Qualifications.* The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) *When court is open.* The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on

legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) *Records.*

(1) *The docket.* The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) *Calendar.* Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) *Other records.* The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) *Notice of an order or judgment.* Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) *Custody of records and papers.* The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; Apr. 29, 2002, Dec. 1, 2002; Apr. 25, 2005, eff. Dec. 1, 2005.)

**10th Cir. Rule 45**

**Rule 45.1. Duties.**

(A) *Funds.* The clerk must account for all court funds.

(B) *Court sessions.* The clerk or a deputy must attend court sessions.

**Rule 45.2. Chief deputy clerk.**

In the absence of the clerk, the chief deputy clerk is acting clerk.

**Rule 45.3. Office location.**

The clerk's office is in the Byron White United States Courthouse, 1823 Stout Street, Denver, Colorado 80257. The telephone number is (303) 844-3157. The clerk's office e-mail address is "10th\_Circuit\_Clerk@ca10.uscourts.gov." The court's website can be found at [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

(As amended eff. Jan. 1, 2009; eff. Jan. 1, 2012.)

**Rule 46.  
Attorneys.**

(a) *Admission to the bar.*

(1) *Eligibility.* An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) *Application.* An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:



“I, \_\_\_\_\_, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.”

(3) *Admission procedures.* On written or oral motion of a member of the court’s bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) *Suspension or disbarment.*

(1) *Standard.* A member of the court’s bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court’s bar.

(2) *Procedure.* The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) *Order.* The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) *Discipline.* A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### **10th Cir. Rule 46**

#### **Rule 46.1. Entry of appearance.**

(A) *Attorneys.* Within 14 days after an appeal or other proceeding is filed, counsel for the parties must file written appearances in a form approved by the court (*see* Appendix A, Form 2). Other attorneys whose names subsequently appear on filed papers must also file written appearances.

While the court requires a separate, formal entry of appearance from all attorneys in the appeal or other proceeding, counsel should also note that attorneys who authorize their names to appear on filed papers have technically entered an appearance and are therefore responsible for the contents of such papers, and also for following all court rules and requirements. Attorneys who appear in a case in this court may not withdraw absent entry of a court order allowing them to do so.

(B) *Pro se.* A party appearing without counsel may notify the clerk in writing of that status by filing an entry of appearance on a form approved by the court (*see* Appendix A, Form 3).

(C) *Change of address.* Once an appearance has been entered, the clerk must be notified of any subsequent change in address. This requirement applies to changes in both street addresses and changes made to email addresses. In particular, counsel should note that any changes in contact information will require an update to that attorney’s ECF registration with the PACER Service Center. *See* [pacer.psc.uscourts.gov](http://pacer.psc.uscourts.gov).

(D) *Certification of interested parties.*

(1) *Certificate.* Each entry of appearance must be accompanied by a certificate listing the names of all interested parties not in the caption of the notice of appeal so that the judges may evaluate possible disqualification or recusal.

(2) *List.* The certificate must list all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, and other legal entities that are financially interested in the outcome of the litigation. For corporations, *see* Fed. R. App. P. 26.1.

(3) *Generic description.* An individual listing is not necessary if a large group of persons or firms can be specified by a generic description.



(4) *Attorneys.* Attorneys not entering an appearance in this court must be listed if they have appeared for any party in a proceeding sought to be reviewed, or in related proceedings that preceded the original action being pursued in this court.

(5) *No additional parties.* If there are no additional parties, entities, or attorneys in any of these categories not previously reported to the court, a report to that effect also is required.

(6) *Obligation to amend.* The certificate must be kept current.

(Amended effective Jan. 1, 2006; eff. Jan. 1, 2007; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2013.)

#### **Rule 46.2. Admission to Tenth Circuit bar.**

(A) *Prerequisite to practice.* Upon filing a case or entering an appearance in this court, an attorney who is not admitted to the Tenth Circuit bar must apply for admission. Forms (as well as other information) are available on the court's website at [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

(B) *Method of admission and fees.* Fed. R. App. P. 46 applies to admission to the Tenth Circuit bar. The amount of the admission fee will be set by the court and is payable to the clerk as trustee. The admission fee is waived for any attorney representing the United States or a federal agency or for any attorney appointed by the court to represent a party on appeal. Per the court's Plan For Attorney Disciplinary Enforcement, any lawyer disbarred from practice before the Circuit will be required to pay the fee prior to being readmitted.

(C) *Trust account.* The clerk will hold all admission fees in a trust account known as the "Attorney Admission Fund." The clerk will disburse money from this account as the chief judge or a delegated judicial committee directs to defray expenses of the annual judicial conference and support other activities and purchases that will benefit the bench and the bar. The clerk must account to the court annually for the trust funds.

(Amended effective January 1, 2007; eff. Jan. 1, 2010; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

#### **Rule 46.3. Responsibilities in criminal and postconviction cases.**

(A) *Prosecution of appeal.* Trial counsel must continue to represent the defendant until either the time for appeal has elapsed and no appeal has been taken or this court has relieved counsel of that duty. An attorney who files a notice of appeal in a criminal case or a postconviction proceeding under 28 U.S.C. § 2254 or § 2255, or who has not obtained an order from the district court granting permission to withdraw from further representation prior to the filing of a pro se notice of appeal, has entered an appearance in this court and may not withdraw without the court's permission. Before filing a proper motion to withdraw under 10th Cir. R. 46.4 counsel must file, at a minimum, an entry of appearance and docketing statement.

(B) *Voluntary dismissal.* A voluntary motion to dismiss a criminal appeal or an appeal in a postconviction proceeding must contain a statement, signed by the appellant, demonstrating knowledge of the right to appeal and expressly electing to withdraw the appeal. If the statement is not included, counsel must show that exceptional circumstances prevented its inclusion. Proof of service must include service on the appellant him or herself.

(As amended effective January 1, 2003; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2012.)

#### **Rule 46.4. Withdrawal.**

(A) *Motion requirements.* Every motion to withdraw in a criminal appeal or in an appeal in a postconviction proceeding must include:

- (1) the reasons for withdrawal;
- (2) a statement that counsel has advised the client to obtain other counsel promptly, unless the client wishes to proceed pro se;
- (3) if the client intends to proceed pro se, a statement noting that intention, as well as a statement that counsel has advised the client of the right to representation, if any, and of any pending obligations under the Federal Rules of Appellate Procedure or these rules;
- (4) proof of service on the client and on all opposing parties; and

## (5) one of the following:

(a) a showing that new counsel has been retained or appointed;

(b) a showing that the defendant has been granted leave to proceed on appeal without prepayment of fees or has been found eligible for benefits under 18 U.S.C. § 3006A, or that a completed motion for leave to proceed without prepayment of fees or for a finding of eligibility under 18 U.S.C. § 3006A has been filed in the district court, including appropriate explanation of the exact status of that motion and the date it was filed;

(c) a signed statement from the client demonstrating knowledge of the right to retain new counsel or apply for appointment of counsel and expressly electing to appear without counsel; or

(d) a showing that exceptional circumstances prevent counsel from meeting any of the other requirements of this subsection.

(B) *Frivolous appeals.*(1) *Duty of counsel.* In a direct criminal appeal, counsel who believes the appeal is frivolous and moves to withdraw or who believes opposition to a motion to dismiss would be frivolous must file an *Anders* brief and advise the court of the defendant's current address. *See Anders v. California*, 386 U.S. 738 (1967).(2) *Notice to defendant.* Except as provided in (3), the clerk will send the defendant by certified mail, return receipt requested, a copy of the brief, the motion to withdraw, and a notice in the form set out in Appendix A, Form 4.(3) *Incompetent defendant.* If the defendant has been found incompetent or there is reason to believe that the defendant is incompetent, the motion to withdraw must so state, and the matter will be referred to the court for appropriate action.(C) *Attorney withdrawal in civil cases.* Where counsel of record for any party files a motion to withdraw after the mandate has issued, the court will treat the motion as a notice of withdrawal. This rule applies in civil cases only and does not apply in postconviction proceedings filed under 28 U.S.C. § 2254 or § 2255.

(As amended eff. Jan. 1, 2009; eff. Jan. 1, 2012; eff. Jan. 1, 2013.)

**Rule 46.5. Signing briefs, motions, and other papers; representations to court; sanctions.**(A) *Signature.* Every brief, motion, or other paper must be signed by at least one attorney of record — or, in a pro se case, by the party personally. The paper must state the signer's mailing address, email address and telephone number. Unless a rule or statute provides otherwise, a paper need not be verified or accompanied by an affidavit. Counsel must follow the requirements of the court's CM/ECF User Manual with respect to electronic filing. *See* [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov). In particular, please see Sections II(H)(1) and (2) of the Manual for general information on the use of digital signatures.(B) *Representations to court.* By presenting to the court — whether by signing (electronically or through an original signature), filing, submitting, or later advocating — a brief, motion, or other paper, an attorney or unrepresented party certifies that, to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) the paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or expense in the litigation;

(2) the issues presented are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or establishing new law; and

(3) the factual contentions or denials are supported in the record.

(C) *Electronic signature.* An electronic signature is an original signature under this rule.(D) *Sanctions.* If a brief, motion, or other paper is signed in violation of this rule, the court — on its own or on a party's motion — may impose upon the person who signed it, a represented party, or both, an appropriate sanction, including:

(1) dismissal or affirmance of the appeal;

(2) monetary sanctions;



(3) initiation of disciplinary proceedings under the Plan for Attorney Disciplinary Enforcement; and

(4) an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the paper, including reasonable attorney's fees.

(As amended Jan. 1, 2008; eff. Jan. 1, 2009; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2012.)

#### **Rule 46.6. Discipline of counsel or parties.**

(A) *Sanctions for increasing cost of litigation.* After giving notice and an opportunity to respond, this court may impose sanctions against parties and attorneys who unreasonably increase the cost of litigation. Examples of unreasonable cost increases include, but are not limited to, putting unnecessary material in records, briefs, appendices, addenda, and other papers.

(B) *Court appointed counsel.* If court appointed counsel for an appellant fails to comply with the Federal Rules of Appellate Procedure or with these rules, the clerk may issue an order requiring counsel to show cause why disciplinary action should not be taken. Action by the court may include monetary sanctions.

(C) *Inadequate representation.* After giving notice, the court may take disciplinary action against attorneys for inadequate representation on appeal.

#### **Rule 46.7. Student practice.**

(A) *Appearance by law students.*

(1) *Consent of party.* An eligible law student may enter an appearance in this court on behalf of a party if the party has filed a statement of consent.

(2) *Agreement of supervising attorney.* A member of the Tenth Circuit bar must file an agreement to supervise the student. The agreement must contain:

(a) a certification by the supervising attorney that the student has satisfied the requirements of (C); and

(b) a copy of the law school certification required by (C)(3).

(B) *Student participation.*

(1) *Briefs.* A law student who has entered an appearance in a case under (A) may appear on a brief if the supervising attorney also appears on the brief.

(2) *Oral argument.* An eligible student may participate in oral argument if the supervising attorney is present in court.

(3) *Other.* The student may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(C) *Student eligibility.* To be eligible to make an appearance under this rule, the law student must provide a letter as described in Rule 46.7(D) or otherwise document that he or she:

(1) is enrolled and in good standing in a law school accredited by the American Bar Association, or be a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;

(2) has completed the equivalent of 4 semesters of legal studies;

(3) is certified to be of good character and competent legal ability, and is qualified to provide the legal representation permitted by this rule, by either the law school's dean or a faculty member designated by the dean; and

(4) is familiar with the Federal Rules of Civil, Criminal, Appellate Procedure, the Federal Rules of Evidence, the American Bar Association Code of Professional Responsibility, and the rules of this court.

(D) *Dean's letter.* A letter from the law school's dean or the designated faculty member describing the student's qualifications under (C) may demonstrate eligibility.

(E) *Supervising attorney.* An attorney who supervises an eligible law student under this rule must:

(1) be a member in good standing of the Tenth Circuit bar;

(2) assume personal professional responsibility for the quality of the student's work;



(3) guide and assist the student as necessary or appropriate under the circumstances;

(4) sign all documents filed with the court (the student may also sign documents, but the attorney's signature is required);

(5) appear with the student in any oral presentations before the court;

(6) file a written agreement to supervise the student; and

(7) supplement any written or oral statement made by the student to this court or opposing counsel if the court so requests.

(As amended eff. Jan. 1, 2011.)

### **Rule 47.**

#### **Local rules by courts of appeals.**

(a) *Local rules.*

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with — but not duplicative of — Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) *Procedure when there is no controlling law.* A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

### **10th Cir. Rule 47**

#### **Rule 47.1. Advisory committee.**

As required by 28 U.S.C. § 2077(b), there is an advisory committee on procedures for the court of appeals.

(A) *Membership.* The committee consists of ten members: one circuit judge, one district judge, one United States attorney or assistant United States attorney, one federal public defender or assistant federal public defender, and one actively practicing member of the Tenth Circuit bar from each of the six states in the circuit. The committee may appoint ad hoc committees consisting of persons who are not members of the advisory committee.

(B) *Selection of members; organization.*

(1) *Circuit judge.* The circuit judge member is the chief judge of the circuit or a circuit judge designated by the chief judge. This member serves as chair.

(2) *District judge; United States attorney; federal public defender.* The district judge member and representatives of the United States attorneys' offices and federal public defenders' offices are selected by their respective associations within the circuit.

(3) *Bar members.* The members of the bar are selected by the circuit judges residing in each respective state. Candidates must have substantial and active federal practices.

(4) *Terms.* Members serve 3 year terms, with a third of the terms expiring each year. Terms begin on April 1. No member, except the chief judge or a designee, may serve successive terms. But a person selected to fill an unexpired term may serve a successive term.

(5) *Reporter; secretary.* The chief staff counsel serves as reporter; the circuit executive, or a designee, serves as secretary.

(C) *Meetings.* The committee shall meet as called by the Chair, and may meet and act in person, by telephone, or through other electronic means.

(D) *Duties.* The committee advises the court about its operating procedures and rules. Among other things, the committee may:

(1) provide a forum for continuous study of the operating procedures and published rules of the court;

(2) serve as a liaison between the bar, the public, and the court on procedural matters and suggestions for changes;

(3) consider and recommend amendments to the rules for adoption by the court;

(4) make suggestions for and assist with programs at the circuit judicial conference; and

(5) make any other studies, reports, and recommendations that the court requests or that the committee determines are appropriate.

(As amended eff. Jan. 1, 2010.)

#### **Rule 47.2. Circuit library.**

The circuit's central and most satellite law libraries are open to all members of the Tenth Circuit bar. Books and materials may not be removed without the librarian's permission.

#### **Rule 47.3. Judicial conference.**

(A) *Authorization.* As permitted by 28 U.S.C. § 333, a judicial conference will be convened every other year, at a time and place designated by the chief judge, or at another court-determined interval that the law permits. In alternate years, the circuit may hold a conference for judges only.

(B) *Purpose.* The conference will consider the business of the circuit's federal courts and devise ways of improving the administration of justice within the circuit.

(C) *Duties of circuit executive.* The circuit executive, who serves as secretary of the conference, is responsible for all records and accounts of the conference, and may perform other conference duties as the chief judge or circuit judicial council may require.

(D) *Agenda.* During judicial conferences, all judges of the Tenth Circuit will meet to discuss the dockets and the administration of justice in the circuit's judicial districts. The chief judge of each district will report on the condition of judicial business in that district and make recommendations about judicial business. In those years in which an open conference is held, all general meetings are open to attorney attendees and are devoted to improving the administration of justice in the Tenth Circuit.

(E) *Registration fee.* A registration fee, set by the judicial council, will be collected from each attorney attendee of the conference. The money collected must be used as directed by the chief judge to defray the expense of the conference. The circuit executive must maintain a judicial conference bank account and keep a record of all receipts and disbursements. During the year after each conference, the circuit executive must make a fiscal report to the judicial council.

(Amended effective January 1, 2003.)

#### **Rule 48. Masters.**

(a) *Appointment; powers.* A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master

specifies or limits the master's powers, those powers include, but are not limited to, the following:

- (1) regulating all aspects of a hearing;
  - (2) taking all appropriate action for the efficient performance of the master's duties under the order;
  - (3) requiring the production of evidence on all matters embraced in the reference; and
  - (4) administering oaths and examining witnesses and parties.
- (b) *Compensation.* If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party. (As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

**10th Cir. Rule 48**

No local rule.





## APPENDIX A.

### FEDERAL RULES OF APPELLATE PROCEDURE FORMS

#### Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court.

		United States District Court	
		for the	
<_____>		District of <_____>	
<Name(s) of plaintiff(s)>,	)		
	)		
Plaintiff(s)	)		
	)		
v.	)	Case No. <Number>	
	)		
	)		
<Name(s) of defendant(s)>,	)		
	)		
Defendant(s)	)		
	)		

### NOTICE OF APPEAL

Notice is hereby given that <Name all parties taking the appeal>, [plaintiffs] [defendants] in the above named case\*, hereby appeal to the United States Court of Appeals for the <\_\_\_\_\_> Circuit [from the final judgment] [from an order <describing it>] entered in this action on <Date>.

Date: <Date>                      <Signature of the attorney or unrepresented party>

\_\_\_\_\_  
<Printed name>  
Attorney for <party>  
<Address>  
<E-mail address>  
<Telephone number>

\* See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.

(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

**Form 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court.**

**UNITED STATES TAX COURT**  
Washington, DC

⟨Name of petitioner⟩,	)	
	)	
	)	
Petitioner	)	
	)	
v.	)	Docket No. ⟨Number⟩
	)	
Commissioner of Internal Revenue,	)	
	)	
Respondent	)	
	)	
	)	

**Notice of Appeal**

Notice is hereby given that ⟨Name all parties taking the appeal⟩\*, hereby appeal to the United States Court of Appeals for the ⟨\_\_\_\_\_⟩ Circuit from ⟨that part of⟩ the decision of this court entered in the above captioned proceeding on ⟨Date⟩ ⟨relating to \_\_\_\_\_⟩.

Date: ⟨Date⟩                      ⟨Signature of the attorney or unrepresented party⟩

\_\_\_\_\_  
⟨Printed name⟩  
⟨Counsel for \_\_\_\_\_⟩  
⟨Address⟩  
⟨E-mail address⟩  
⟨Telephone number⟩

\* See Fed. R. App. P. 3(c) for permissible ways of identifying appellants.  
(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

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Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer.

United States Court of Appeals  
for the  
< \_\_\_\_\_ > Circuit

<Name of petitioner> )  
)  
Petitioner )  
)  
v. )  
)  
<XYZ Commission> )  
)  
Respondent )  
)  
)

PETITION FOR REVIEW

<Here name all parties bringing the petition>\* hereby petition the court for review of the Order of the <XYZ Commission> <describe the order> entered on <Date>.

Date: <Date>                      <Signature of the attorney or unrepresented party>

\_\_\_\_\_  
<Printed name>  
<Attorney for Petitioners>  
<Address>  
<E-mail address>  
<Telephone number>

\* See Fed. R. App. P. 15.  
  
(As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

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Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis.

United States District Court	
for the	
(Name(s) of plaintiff(s)),	( District of )
Plaintiff(s)	
v.	Case No. (Number)
(Name(s) of defendant(s)),	
Defendant(s)	

AFFIDAVIT ACCOMPANYING MOTION  
FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion	Instructions
I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.
Signed: _____	Date: _____

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$_____	\$_____	\$_____	\$_____
Self-employment	\$_____	\$_____	\$_____	\$_____
Income from real property (such as rental income)	\$_____	\$_____	\$_____	\$_____
Interest and dividends	\$_____	\$_____	\$_____	\$_____
Gifts	\$_____	\$_____	\$_____	\$_____
Alimony	\$_____	\$_____	\$_____	\$_____
Child support	\$_____	\$_____	\$_____	\$_____

Retirement (such as social security, pensions, annuities, insurance)	\$_____	\$_____	\$_____	\$_____
Disability (such as social security, insurance payments)	\$_____	\$_____	\$_____	\$_____
Unemployment payments	\$_____	\$_____	\$_____	\$_____
Public-assistance (such as welfare)	\$_____	\$_____	\$_____	\$_____
Other (specify): _____	\$_____	\$_____	\$_____	\$_____
<b>Total monthly income:</b>	\$_____	\$_____	\$_____	\$_____

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	\$_____
_____	_____	_____	\$_____
_____	_____	_____	\$_____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
_____	_____	_____	\$_____
_____	_____	_____	\$_____
_____	_____	_____	\$_____

4. How much cash do you and your spouse have? \$ \_\_\_\_\_

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
_____	_____	\$_____	\$_____
_____	_____	\$_____	\$_____
_____	_____	\$_____	\$_____

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

<b>Home</b> (Value) \$ _____	<b>Other real estate</b> (Value) \$ _____	<b>Motor vehicle #1</b> (Value) \$ _____ Make and year: _____ Model: _____ Registration #: _____
---------------------------------	--	--



**Motor vehicle #2****Other assets****Other assets**

(Value) \$ \_\_\_\_\_

(Value) \$ \_\_\_\_\_

(Value) \$ \_\_\_\_\_

Make and year: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Model: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Registration #: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

**Person owing you or  
your spouse money****Amount owed to you****Amount owed to  
your spouse**

\_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

7. State the persons who rely on you or your spouse for support.

**Name [or, if under  
18, initials only]****Relationship****Age**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	<b>You</b>	<b>Your Spouse</b>
Rent or home-mortgage payment (including lot rented for mobile home)	\$ _____	\$ _____
Are real-estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ _____	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry-cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____
Transportation (not including motor vehicle payments)	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$ _____	\$ _____
Life:	\$ _____	\$ _____
Health:	\$ _____	\$ _____
Motor vehicle:	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments) (specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle:	\$ _____	\$ _____

Credit card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
<b>Total monthly expenses:</b>	\$ _____	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

[ ] Yes [ ] No If yes, describe on an attached sheet.

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form?

[ ] Yes [ ] No  
If yes, how much? \$ \_\_\_\_\_  
If yes, state the attorney's name, address, and telephone number:

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[ ] Yes [ ] No  
If yes, how much? \$ \_\_\_\_\_  
If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the city and state of your legal residence.

Your daytime phone number: (\_\_\_\_) \_\_\_\_\_  
Your age: \_\_\_\_\_ Your years of schooling: \_\_\_\_\_  
Last four digits of your social-security number: \_\_\_\_\_

(As amended Apr. 28, 2010, eff. Dec. 1, 2010.)

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**Form 5. Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court or a Bankruptcy Appellate Panel.**

United States District Court  
for the  
<\_\_\_\_\_> District of <\_\_\_\_\_>

In re	)	
	)	
<Name of debtor>,	)	
	)	
Debtor	)	
	)	
<Name of plaintiff>,	)	
	)	
Plaintiff	)	
	)	
v.	)	File No. <Number>
	)	
<Name of defendant>,	)	
	)	
Defendant	)	
	)	
	)	

**NOTICE OF APPEAL TO UNITED STATES COURT  
OF APPEALS FOR THE <\_\_\_\_\_> CIRCUIT**

<Name of party>, the [plaintiff] [defendant] [other party], appeals to the United States Court of Appeals for the <\_\_\_\_\_> Circuit from the [final judgment] [order] [decree] of the [district court for the district of <\_\_\_\_\_>] [bankruptcy appellate panel of the <\_\_\_\_\_> circuit], entered in this case on <Date>.

<Here describe the judgment, order, or decree.>

The parties to the [judgment] [order] [decree] appealed from and the names and addresses of their respective attorneys are as follows:

Date: <Date> <Signature of the attorney for appellant>

\_\_\_\_\_  
<Printed name>  
Attorney for Appellant  
<Address>  
<E-mail address>  
<Telephone number>



**Form 6. Certificate of Compliance With Rule 32(a).****CERTIFICATE OF COMPLIANCE WITH RULE 32(a)****Certificate of Compliance with Type-Volume Limitation,  
Typeface Requirements, and Type Style Requirements**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:
  - ☐ this brief contains {state the number of} words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or
  - ☐ this brief uses a monospaced typeface and contains {state the number of} lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:
  - ☐ this brief has been prepared in a proportionally spaced typeface using {state name and version of word processing program} in {state font size and name of type style}, *or*
  - ☐ this brief has been prepared in a monospaced typeface using {state name and version of word processing program} with {state number of characters per inch and name of type style}.

Date: {Date}

{Signature of the attorney}

\_\_\_\_\_  
{Printed name}

Attorney for {\_\_\_\_\_ } }

{Address}

{E-mail address}

{Telephone number}

(Added Apr. 29, 2002, eff. Dec. 1, 2002.)  

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**TENTH CIRCUIT FORMS****Form 1. Docketing Statement Instructions and Form.****UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257  
(303) 844-3157  
[www.ca10.uscourts.gov](http://www.ca10.uscourts.gov)

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**DOCKETING STATEMENT INSTRUCTIONS**

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**PLEASE FOLLOW THE INSTRUCTIONS REGARDING CONTENT CAREFULLY. IN PARTICULAR, PLEASE NOTE THE ATTACHMENT REQUIREMENTS HAVE CHANGED EFFECTIVE JANUARY 1, 2013.**

**I. APPEALS FROM DISTRICT COURT.**

The appellant must complete a Docketing Statement and file it in the court of appeals within 14 days after filing the notice of appeal. The docketing statement must be filed via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

**The following documents must be included with the Docketing Statement:**

- A. The final judgment or order appealed;
- B. All pertinent findings and conclusions, opinions, or orders which form the basis for the appeal;
- C. Any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal, any motion for judgment of acquittal, for arrest of judgment or for a new trial, with the certificate of service and the dispositive order(s); and
- D. Any motion for extension of time to file the notice of appeal and the dispositive order.

Please complete all sections of the Docketing Statement form except Sections I-B and I-C. Section V should only be completed in criminal appeals.

**II. PETITIONS FOR REVIEW OR APPLICATIONS FOR ENFORCEMENT OF AGENCY ORDERS.**

The petitioner must complete a Docketing Statement and file it in the court of appeals within 14 days after filing a petition for review or application for enforcement. The docketing statement must be filed via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

**The following documents must be included with the Docketing Statement:**

- A. The agency docket sheet reflecting entry of the order to be reviewed;
- B. The order to be reviewed; and
- C. The petition for review or application for enforcement.

Please complete all sections of the Docketing Statement except Sections I-A, I-C, and V.

**III. APPEALS FROM UNITED STATES TAX COURT.**

The appellant must complete a Docketing Statement and file it in the court of appeals within 14 days after the appeal is docketed. The docketing statement must be filed via the

court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

**The following documents must be included with the Docketing Statement:**

- A. The decision appealed;
- B. The judgment appealed; and
- C. If the notice of appeal was filed by mail, proof of the postmark.

Please complete all sections of the Docketing Statement form except Sections I-A, I-B, and V.

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**DOCKETING STATEMENT**

Case Name: \_\_\_\_\_  
 Appeal No. (if available): \_\_\_\_\_  
 Court/Agency Appeal From: \_\_\_\_\_  
 Court/Agency Docket No.: \_\_\_\_\_ District Judge: \_\_\_\_\_  
 Party or Parties filing Notice of Appeal/Petition: \_\_\_\_\_

**I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW.**

**A. Appeal from district court.**

1. Date notice of appeal filed: \_\_\_\_\_

a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: \_\_\_\_\_

b. Is the United States or an officer or an agency of the United States a party to this appeal? \_\_\_\_\_

**2. Authority fixing time limit for filing notice of appeal:**

Fed. R. App. 4 (a)(1)(A) _____	Fed. R. App. 4(a)(6) _____
Fed. R. App. 4 (a)(1)(B) _____	Fed. R. App. 4(b)(1) _____
Fed. R. App. 4 (a)(2) _____	Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____	Fed. R. App. 4(b)(4) _____
Fed. R. App. 4 (a)(4) _____	Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____	

Other: \_\_\_\_\_

3. Date final judgment or order to be reviewed was filed and **entered** on the district court docket: \_\_\_\_\_

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b). \_\_\_\_\_

*(If the order being appealed is not final, please answer the following questions in this section.)*

a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done? \_\_\_\_\_

b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? \_\_\_\_\_

c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? \_\_\_\_\_

5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A). \_\_\_\_\_



- a. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court: \_\_\_\_\_
- b. Has an order been entered by the district court disposing of any such motion, and, if so, when? \_\_\_\_\_

B. *Review of agency order.* (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed: \_\_\_\_\_
2. Date of the order to be reviewed: \_\_\_\_\_
3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: \_\_\_\_\_
4. Specify the time limit for filing the petition (cite specific statutory section or other authority): \_\_\_\_\_

C. *Appeal of tax court decision.*

1. Date notice of appeal was filed: \_\_\_\_\_  
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: \_\_\_\_\_
3. Date of entry of decision appealed: \_\_\_\_\_
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) \_\_\_\_\_

II. *List all related or prior related appeals in this court with appropriate citation(s). If none, please so state.*

III. *Give a brief description of the nature of the present action and result below.*

IV. *Issues raised in this appeal.*

V. *Additional information in criminal appeals.*

- A. Does this appeal involve review under 18 U.S.C. § 3742(a) or (b) of the sentence imposed? \_\_\_\_\_
- B. If the answer to A (immediately above) is yes, does the defendant also challenge the judgment of conviction? \_\_\_\_\_
- C. Describe the sentence imposed. \_\_\_\_\_
- D. Was the sentence imposed after a plea of guilty? \_\_\_\_\_
- E. If the answer to D (immediately above) is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? \_\_\_\_\_
- F. Is defendant on probation or at liberty pending appeal? \_\_\_\_\_
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? \_\_\_\_\_

**NOTE:** In the event expedited review is requested and a motion to that effect is filed, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered by completing and delivering the transcript order form to the clerk of the district court with a copy filed in the court of appeals.

VI. *Attorney filing docketing statement:*

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

A. ☐ Appellant  
☐ Petitioner  
☐ Cross-Appellant

☐ Retained Attorney  
☐ Court-Appointed  
☐ Employed by a government entity  
 (please specify \_\_\_\_\_)  
☐ Employed by the Office of the Federal Public Defender.

Date \_\_\_\_\_

☐ Attorney at Law

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

The following Certificate of Service may be used.

I, \_\_\_\_\_ hereby certify that on  
[appellant/petitioner or attorney therefor]  
\_\_\_\_\_ I served a copy of the foregoing **Docketing Statement**, to:  
[date]

\_\_\_\_\_, at \_\_\_\_\_  
[counsel for/or appellee/respondent]

\_\_\_\_\_, the last known  
address/email address, by \_\_\_\_\_,  
[state method of service]

Signature

Date \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
[Full name and address of attorney]

=====



Form 2. Entry of Appearance and Certificate of Interested Parties Under 10th Cir. R. 46.1.

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

Entry of Appearance and Certificate of Interested Parties

v.

)  
)  
)  
)  
)

Case No.

INSTRUCTIONS: COUNSEL FOR A PARTY MUST FORTHWITH EXECUTE AND FILE THIS FORM, INDICATING METHOD(S) OF SERVICE ON ALL OTHER PARTIES. MULTIPLE COUNSEL APPEARING FOR A PARTY OR PARTIES AND WHO SHARE THE SAME MAILING ADDRESS MAY ENTER THEIR APPEARANCES ON THE SAME FORM BY EACH SIGNING INDIVIDUALLY.

In accordance with 10th Cir. R. 46.1, the undersigned attorney(s) hereby appear(s) as counsel for

Party or Parties

, in the subject case(s).

Appellant/Petitioner or Appellee/Respondent

Further, in accordance with 10th Cir. R. 46.1, the undersigned certify(ies) as follows: (Check one.)

- ☐ On the reverse of this form is a completed certificate of interested parties and/or attorneys not otherwise disclosed, who are now or have been interested in this litigation or any related proceeding. Specifically, counsel should not include in the certificate any attorney or party identified immediately above.
- ☐ There are no such parties, or any such parties have heretofore been disclosed to the court.

Name of Counsel

Name of Counsel

Signature of Counsel

Signature of Counsel

Mailing Address and Telephone Number

Mailing Address and Telephone Number

E-Mail Address

E-Mail Address

I hereby certify that a copy of this Entry of Appearance and Certificate of Interested Parties was served on

(please insert date) \_\_\_\_\_ via (state method of service) \_\_\_\_\_  
to \_\_\_\_\_

(See Fed. R. App. P. 25(b)) (Signature) \_\_\_\_\_

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

v. )  
 )  
 )  
 )  
 ) Case No.  
 )  
 )  
 )

CERTIFICATE OF INTERESTED PARTIES

The following are not direct parties in this appeal but do have some interest in or a relationship with the litigation or the outcome of the litigation. *See* 10th Cir. R. 46.1(D). In addition, attorneys not entering an appearance in this court but who have appeared for any party in prior trial or administrative proceedings, or in related proceedings, are noted below.

(Attach additional pages if necessary.)

**Form 3. Entry of Appearance — Pro Se.**

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**Entry of Appearance — Pro Se**

v.

Case No.

**INSTRUCTIONS:** A PARTY DESIRING TO APPEAR WITHOUT COUNSEL SHALL NOTIFY THE CLERK BY COMPLETING AND SIGNING THIS FORM. THE FEDERAL RULES OF APPELLATE PROCEDURE AND TENTH CIRCUIT RULES REQUIRE THAT ALL PAPERS SUBMITTED TO THE COURT FOR FILING BE SIGNED BY THE FILING PARTY AND THAT COPIES BE SERVED ON OPPOSING PARTIES OR THEIR COUNSEL, IF REPRESENTED BY COUNSEL. THE ORIGINAL OF EVERY PAPER SUBMITTED FOR FILING MUST CONTAIN PROOF OF SERVICE IN A FORM SIMILAR TO THAT ON THE REVERSE OF THIS FORM. ANY PAPER THAT DOES NOT CONTAIN THE REQUIRED PROOF OF SERVICE MAY BE DISREGARDED BY THE COURT OR RETURNED.

I hereby notify the clerk that I am appearing pro se as the

\_\_\_\_\_ in  
(Appellant, Petitioner, Appellee or Respondent)

this case. All notices regarding the case should be sent to me at the address below. If my mailing address changes, I will promptly notify the clerk in writing of my new address.

Further, in accordance with 10th Cir. R. 46.1, I certify: **(Check one.)**

- ☐ All parties to this litigation, including parties who are now or have been interested in this litigation, are revealed by the caption on appeal, or
- ☐ There are parties interested in this litigation that do not appear in the caption for this appeal, and they are listed on the back of this form.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City State Zip Code

**CERTIFICATE OF SERVICE**

I hereby certify that on \_\_\_\_\_ I sent a copy of the Pro Se Entry of  
[date]



Appearance Form to: \_\_\_\_\_

at \_\_\_\_\_

\_\_\_\_\_, the last known

address/email address, by \_\_\_\_\_

[state method of service]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

### **CERTIFICATE OF INTERESTED PARTIES**

(attach additional pages if necessary)

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Form 4. Notice that Counsel has Moved to Withdraw Under 10th Cir. R. 46.4(B)(2).

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

)  
)  
)  
)  
)  
)

NOTICE THAT COUNSEL HAS  
MOVED TO WITHDRAW

v.

)  
)  
)

No.

TO: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address or Prison Box)

\_\_\_\_\_  
(City, State, Zip Code)

Your attorney filed a brief on \_\_\_\_\_, 20\_\_\_\_, stating a belief that your appeal is frivolous and requesting permission to withdraw from the case. Please be advised:

- (1) You have 30 days from the date this notice was mailed to raise any points to show why your conviction should be set aside.
- (2) If you do not respond within the 30 days, the court may affirm or dismiss your appeal. An affirmance or dismissal would mean that your case would be finally decided against you.
- (3) If you want to make a showing why the court should not affirm or dismiss your appeal, and you believe that there is a very good reason why you will not be able to file your objections to affirmance or dismissal with the court within the 30-day limit, you should write immediately to the court and ask for up to 30 more days. If additional time is granted, you must file your objections and state the reasons why the court should not affirm or dismiss your appeal before your additional time expires.
- (4) You do not have a right to another attorney unless this court finds, based upon your objections and the reasons for them, that your case requires further briefing or argument. If the court finds that your case requires further briefing or argument, an attorney will be appointed to handle your appeal.

If you want to write to this court, you should address your letter to:

Clerk of the Court  
United States Court of Appeals  
Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257

Be sure to show the name and number of your case clearly on any material you send to the court.

Notice mailed \_\_\_\_\_  
Date \_\_\_\_\_ Deputy Clerk, U.S. Court of Appeals

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Form 5. Report of Counsel Conference Under 10th Cir. R. 33.2.

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

)  
) REPORT OF RULE 33.2 COUNSEL  
) CONFERENCE  
)  
)  
)

v. ) No.  
)  
)  
)

**INSTRUCTIONS:** Counsel for appellant/petitioner must complete this form in those civil cases in which a counsel conference is required by 10th Cir. R. 33.2(A). The report must be mailed, within 10 days of initiating a counsel conference under 10th Cir. R. 33.2(C), to:

Circuit Mediation Office  
United States Court of Appeals  
for the Tenth Circuit  
1823 Stout Street  
Denver, CO 80257  
(303) 844-6017

Counsel for appellant/petitioner certifies that settlement was discussed with opposing counsel on \_\_\_\_\_ or that it was impossible for counsel to discuss settlement because \_\_\_\_\_

Settlement of the appeal ☐ was ☐ was not reached.  
Counsel ☐ do ☐ do not plan to have further settlement discussions.

Date: \_\_\_\_\_  
Attorney for Appellant/Petitioner  
Address:  
Telephone:

## APPENDIX B. APPELLATE TRANSCRIPT MANAGEMENT PLAN FOR THE TENTH CIRCUIT

The Court Reporter Management Plans adopted by the district courts within this circuit and approved by the Judicial Council are incorporated and made a part of this Plan to the extent that they provide for the production of appellate transcripts. To further promote the prompt production of transcripts, which contributes to the timely processing of appeals, the Judicial Council of the Tenth Circuit adopts the following guidelines:

### 1. *District court reporter coordinators.*

Each district court must appoint a Court Reporter Coordinator within the clerk's office, who will be responsible for:

- a) monitoring the preparation and filing of transcripts, and ensuring compliance with this Plan.
- b) bringing to the attention of the clerk of the court of appeals violations of this Plan, which cannot be resolved locally, and
- c) ensuring that communications are forwarded to and received by the appropriate parties.

### 2. *Calculation of times.*

No transcript order will be deemed complete for purposes of calculation of delivery dates until satisfactory financial arrangements have been made with the court reporter. The Tenth Circuit Transcript Order Form contains the reporter's certification that arrangements for payment have been made. If the arrangements subsequently fail, the burden will be on reporters to notify this court in writing that the litigant has failed to abide by the arrangements for payment. This notification shall include copies of letters requesting payment or deposit. The court will enforce reporters' legitimate requests for payment by threat of dismissal of appeals for failure to prosecute.

### 3. *Extensions of time.*

**An extension of time pursuant to Federal Rule of Appellate Procedure 11(b)(1)(B) does not waive the mandatory fee reduction.** To obtain a waiver, a separate request alleging appropriate circumstances must be made.

### 4. *Waiver of mandatory fee reduction.*

The clerk of the court of appeals may waive the mandatory fee reduction or other sanctions imposed by this Plan, upon receipt of a timely request, in circumstances such as the following:

#### (a) *Illness or incapacity of the reporter.*

A reporter requesting a waiver of the fee reduction due to illness or other incapacity must provide a letter from the district court reporter coordinator which verifies the nature and expected duration of the illness or other incapacity. This certification must be attached to a request for extension and will be kept confidential. The request must include the date by which the transcript will be completed.

#### (b) *Planned vacation.*

The reporter must submit a vacation schedule approved by the trial judge. The request must include the date by which the transcript will be completed.

#### (c) *Lengthy or complex litigation, excessive pages ordered.*

When the transcript in a particular case will require additional time, the reporter must provide a certification from the district court judge stating the reason additional time is required. When multiple orders are received at the same time, the reporter may request an extension in all cases, but must provide copies of the orders and the estimated length of the transcripts involved. The request must include the date by which each transcript will be completed.

A form for requesting an extension of time and/or waiver is attached as Exhibit I. The Judicial Council prefers that this form be used.

No provision is made for extensions of time for transcript backlog. Transcript production

is considered by the Administrative Office to be compensated by transcript fees. Reporters are expected to hire note readers or substitutes when transcripts cannot be completed within specified times. The hiring of note readers and/or substitutes does not excuse reporters, however, from requesting extensions of time under Fed. R. App. P. 11(b) when a transcript cannot be completed within the prescribed time.

Occasionally, counsel may request that a reporter suspend production of a transcript. Transcript production may be stopped only by order of the court of appeals. It is the responsibility of the party who ordered the transcript to move for suspension of production.

#### 5. *Substitute court reporters.*

Pursuant to Judicial Conference policy, reporters are expected to hire substitutes when they are unable to complete transcripts on time. A reporter who cannot file a transcript before the ninetieth day after it is ordered must remove him or herself from courtroom duties and provide a substitute.

Official reporters are responsible for transcript production by their substitutes. Requests for extensions received from substitute reporters will be returned to the district court reporter coordinator so the appropriate official reporter can make a proper request.

#### 6. *Court reporters' manual.*

The *Court Reporters' Manual*, Volume 6 of the *Guide to Judiciary Policy* is incorporated into these guidelines. Reporters in this circuit are expected to know and abide by the rules, regulations and policies contained in it.

The pages of a transcript are to be numbered in a single series of consecutive numbers for each proceeding, regardless of the number of days involved. Pages in a multiple-volume transcript must be numbered consecutively for an entire multiple-volume transcript. See Volume 6, *Guide to Judiciary Policy*, Chapter 5, § 520 *et seq.* See also *United States v. Davis*, 953 F.2d 1482, 1487 n.2 (10th Cir. 1992).

#### 7. *Miscellaneous provisions.*

Where there are multiple reporters responsible for a single transcript order, one must take the lead. The lead reporter must be an official court reporter. When a transcript is being paid for under the Criminal Justice Act the lead reporter must assist in obtaining the district judge's signature on the completed form CJA 24. If a transcript order form is incomplete or inaccurate, the lead reporter must give written notice of the deficiency to the ordering party with a copy to this court.



EXHIBIT I

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

Court of Appeals Docket Number(s): \_\_\_\_\_

Short Title: \_\_\_\_\_

District Court Docket Number(s): \_\_\_\_\_

REQUEST FOR EXTENSION OF TIME TO FILE TRANSCRIPT

I request an extension of time to file the transcript until \_\_\_\_\_. This extension is necessary because \_\_\_\_\_  
\_\_\_\_\_

Attach letter from court reporter coordinator if necessary.

**I understand that the grant of an extension does not waive the mandatory fee reduction.**

Signature: \_\_\_\_\_  
Official Court Reporter

REQUEST FOR WAIVER OF MANDATORY FEE REDUCTION

I request waiver of the mandatory fee reduction for (check one):  
\_\_\_\_\_ Illness or other incapacity — I have attached the required certification.  
\_\_\_\_\_ Planned vacation — I have attached the required certification.  
\_\_\_\_\_ Lengthy or Complex Litigation or Excessive Pages Ordered — I have attached the required documentation.

Signature: \_\_\_\_\_  
Official Court Reporter

**ATTACH PROOF OF SERVICE ON ALL COUNSEL**

\_\_\_\_\_

\_\_\_\_\_



(4) Appellate proceedings prevail over all trial hearings, other than actual trials.

(5) Within each of the above categories only, the action which was first set shall take precedence.

(C) In addition to the above priorities, consideration should be given to the comparative age of the cases, their complexity, the estimated trial time, the number of attorneys and parties involved, whether the trial involves a jury, and the difficulty or ease of rescheduling.

(D) The judges of the courts involved in a scheduling conflict shall promptly confer, resolve the conflict, and notify counsel of the resolution. The judge presiding over the older case (i.e., the earliest filed case) will be responsible for initiating this communication.

(E) Conflict resolution shall not require the continuance of the other matter or matters not having priority. In the event the matter determined to have priority is disposed of prior to the scheduled time set, the attorney shall immediately notify all affected parties, including the court affected, of the disposal and shall, absent good cause shown to the court, proceed with the remaining case or cases which did not have priority if the setting was not vacated.

(F) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.

Entered for the Court

Patrick Fisher  
Clerk of Court

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## **ADDENDUM I. CRIMINAL JUSTICE ACT PLAN**

### **UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

#### **PREAMBLE**

Pursuant to the Criminal Justice Act (Act), 18 U.S.C. § 3006A(b), the court adopts the following plan for furnishing representation in criminal cases on appeal. This amends the plan adopted by the Circuit Council on February 11, 1971 and which was last amended on January 1, 1996. When requested, representation will be provided to every person who is entitled to representation under the Act.

#### **I. Appointment of Counsel in the Tenth Circuit**

Absent a change in financial conditions, any determination that a person is eligible for Criminal Justice Act counsel made in the district court shall continue on appeal. In its discretion, the court of appeals may appoint the attorney who represented the eligible person in the district court, the special appellate division of the Federal Public Defender's office for the District of Colorado, another federal Public Defender's office from the circuit, or it may appoint a lawyer from the court's Criminal Justice Act Panel.

Appointed counsel must continue to represent the appellant until relieved by the court of appeals. 10th Cir. R. 46.3(A). If filed in compliance with 10th Cir. R. 46.4(A), trial counsel's request to be relieved from representation on appeal shall be given due consideration. While the court recognizes there may be benefits to maintaining continuity of counsel, it also recognizes that the skills necessary to proceed as appellate counsel may differ from those required for trial counsel. Substitution of counsel shall not reflect negatively in any way on the conduct of the lawyer involved. The court will require, however, that trial counsel perfect the appeal prior to seeking withdrawal.

#### **II. Composition of panel of private attorneys**

##### **A. *Criminal Justice Act Panel.***

The Court has established a panel of private attorneys (the CJA Panel) who are eligible and willing to accept appointments in cases where representation is required under 18 U.S.C. § 3006A. These attorneys, along with the lawyers from the Appellate Division of the Federal Public Defender's Office for the District of Colorado, shall constitute the core group from which appointments shall be made. The Court shall approve private attorneys for membership on the CJA Panel after receiving recommendations from the Standing CJA Committee, established pursuant to Section III of this Plan.

##### **B. *Size***

The CJA Panel will not have a size limitation, but will include adequate attorney representation from each of the districts in the circuit. The Standing committee will view applications for membership on the panel with an eye towards identifying qualified appellate counsel from each state in the Tenth Circuit.

##### **C. *Eligibility***

To be eligible for service on the CJA Panel, lawyers must be or become, and remain, members of the Tenth Circuit bar in good standing. They must certify that they have a working knowledge of the Federal Rules of Appellate Procedure and federal criminal law. Counsel on the list must be willing to accept at least one CJA appellate appointment each year.

##### **D. *Term of Service***

There are no fixed terms for panel membership. Lawyers will remain on the panel until they resign or are removed in accordance with the procedure established in section II(G).

##### **E. *Application for Membership***

Applications for membership on the panel will be available in the office of the Clerk of Court and on the circuit's website at [www.ca10.uscourts.gov/clerk/showcja.php](http://www.ca10.uscourts.gov/clerk/showcja.php). Com-

pleted applications must be submitted to the Clerk of Court for transmittal to the court's Standing Committee on the Criminal Justice Act.

*F. Maintenance of the List*

The Clerk of Court shall maintain a public list in the clerk's office of the members of the CJA Appellate Panel.

*G. Removal from the Panel*

The court is very appreciative of the time and commitment required to accept appellate appointments. Membership on the panel is not a property right, however, and the refusal to accept appointments on a consistent basis will lead the court to assume the lawyer has resigned from the panel. Counsel will be notified in writing of any change in status resulting from the failure to accept appointments. The Standing Committee may also recommend removal from the panel for other reasons. That recommendation must be in writing and will be forwarded to the court for consideration. If the court decides to accept the recommendation, counsel will be given notice of the proposed basis for removal and will be provided an opportunity to respond in writing. The court of appeals will make all final decisions regarding removal. If a panel attorney is removed, he or she will receive a letter of explanation from the court. Any attorney whose resignation is assumed because he or she has not accepted cases may file a request to return to active status. The request must include an explanation regarding the refusal to accept appointments. The Standing Committee will make a recommendation to the court on those types of requests. Attorneys removed for any other reason may file a renewed application no earlier than one year from the date of removal. In the application, counsel must note the earlier removal and explain why they believe they should be allowed to return to the panel.

### **III. Standing Committee on the Criminal Justice Act**

*A. Membership and Structure*

The Chief Judge, or the Chief Judge's delegate, shall appoint the Standing Committee. It shall be composed of two lawyers from Oklahoma, and one lawyer each from the remaining states in the circuit. Members may be private attorneys or lawyers from the various Federal Public Defenders' offices. These attorneys shall serve staggered three year terms, and may serve two consecutive terms. In addition to these seven members, the Federal Public Defender for the Districts of Colorado and Wyoming shall be a permanent member of the Standing Committee. One of the other positions on the Committee must be filled with one of the other Federal Public Defenders from the circuit. The Chief Judge may also appoint a liaison to the Committee from the court's legal staff. That person will not be a committee member, but will be available to both the court and members for committee support and consultation.

*B. Duties*

The Standing Committee shall review the qualifications of applicants for the panel, conduct further inquiries as may be indicated, and shall make recommendations to the court of appeals for placement of lawyers on the panel. The Standing Committee shall also review the operation of the appellate panel on a periodic basis and shall make recommendations to the court regarding any necessary changes. This review may include investigation of complaints concerning panel attorneys. The Committee may make recommendations regarding removal of a lawyer from the list to the court of appeals. The Standing committee's recommendations to the court shall remain confidential. The CJA panel list, however, will be public information.

### **IV. Change in Financial Conditions**

If a party becomes financially unable to employ counsel on appeal, a motion seeking a finding that the party is eligible for the appointment of counsel must be made in district court. *See* 18 U.S.C. § 3006A. Because the district court must make factual findings regarding the defendant's financial eligibility, appropriate forms, particularly a CJA 23 form or the local equivalent, should be filed in that court first. Upon issuance of an order finding the person financially eligible, counsel may file a motion in this court for appoint-



ment of counsel under the statute. The court may, at any time, examine or re-examine the financial status of the defendant. If a court finds that the defendant is financially able to obtain counsel or make partial payments for representation, the court may deny or terminate an appointment pursuant to subsection (c) of the Act or require partial payment to be made pursuant to subsection (f) of the Act.

### **V. Death Penalty Cases**

Pursuant to the Guidelines for Administering the Criminal Justice Act (CJA Guidelines), the court may, in an appropriate death penalty case, appoint and compensate under the Act an attorney or attorneys from a state or local public defender organization or from a legal aid agency or other non-profit organization.

### **VI. Petition For Writ of Certiorari**

If the judgment of this court is adverse to the client, counsel must inform the client of the right to petition the Supreme Court of the United States for a writ of certiorari. Counsel must file a petition for a writ of certiorari if the client requests that such a review be sought, and, in counsel's considered judgment, there are grounds for seeking Supreme Court review that are not frivolous and are consistent with the standards for filing a petition contained in the Rules of the Supreme Court and applicable case law. If, on the other hand, the client requests that counsel file a petition for a writ of certiorari and, in counsel's considered judgment, there are no such grounds for seeking Supreme Court review that are non-frivolous and for filing a petition as defined in the Rules of the Supreme Court and applicable case law, counsel should promptly so advise the client and, after the entry of judgment, submit to this court a written motion, pursuant to 10th Cir. R. 46.4, for leave to withdraw from the representation. If this court grants counsel's motion and terminates counsel's appointment, counsel must so advise the client in writing as soon as possible. The writing shall also advise the client of his or her right to file a pro se petition for a writ of certiorari.

### **VII. Quality of Representation**

Attorneys appointed pursuant to any provisions of the Act must conform to the highest standards of professional conduct, including, but not limited to, the provisions of the American Bar Association's Code of Professional Responsibility.

### **VIII. Compensation**

#### **A. Claims**

All claims for compensation and expenses must be submitted to the clerk, on the forms and in the manner found on the court's website. See <http://www.ca10.uscourts.gov/clerk/showcja.php>. All claims must be supported as required by the CJA Guidelines and the court's Advice to CJA Counsel letter(s). In each case, the court will fix the compensation to be paid the attorney as provided in the Act. Counsel appointed in direct criminal appeals and non-death penalty § 2254 and § 2255 matters should review the Court's general *Advice To Counsel* letter for detailed information and guidelines regarding compensation issues. Counsel appointed in death penalty matters should review the court's separate *Death Penalty Advice To Counsel* letter. Copies of those letters are available online at <http://www.ca10.uscourts.gov/clerk/showcja.php>.

Although the Act provides for limited compensation, the court recognizes that the compensation afforded often does not reflect the true value of the services rendered. Consequently, it is the court's policy not to cut or reduce claims which are reasonable and necessary. If the court intends to reduce a claim for compensation it will provide the attorney prior notice of the proposed reduction with a brief statement of the reason(s) for it, and will provide an opportunity to address the matter. CJA Guidelines § 230.36. Notice will not be given where the reduction is based on mathematical or technical errors.



**B. *Other Payments***

Except as authorized or directed by the court, no appointed attorney and no person or organization authorized by the court to furnish representation under the act may request or accept any payment or promise of payment for representation of a defendant.

**IX. Application of Guidelines**

Appointment of counsel under the Act will be governed generally by the Guidelines for Administering the CJA and related statutes. *See* Volume 7, Guide to Judiciary Policy, Appointment and Payment of Counsel, Part A. Online at: <http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel/CJAGuidelinesForms/GuideToJudiciaryPolicyVolume7.aspx>.  
(Amended eff. Jan. 1, 2006; eff. Jan. 1, 2010; eff. Jan. 1, 2011; eff. Jan. 1, 2012.)

## **ADDENDUM II. PLAN FOR APPOINTMENT OF COUNSEL IN SPECIAL CIVIL APPEALS**

### *Purpose:*

To provide representation in special cases for persons who are financially unable to obtain the services of counsel.

### *Criteria:*

Under this plan, the court may appoint counsel to represent a party or parties to a civil matter pending before the court when:

1. the person is financially unable to obtain the services of counsel;
2. the person is not entitled to appointed counsel under the provisions of the Criminal Justice Act or other source of legal assistance;
3. the litigation presents complex and significant legal issues, the outcome of which may have wide impact;
4. it is manifestly clear that the services of counsel are necessary for the effective presentation of the issues to the court; and
5. the interests of justice require that counsel be assigned to assist the litigant who would otherwise be compelled to proceed *pro se*.

### *Procedure:*

When, upon the application of a party or upon the court's motion, it is determined that in an appeal or other proceeding criteria required by this plan are satisfied, a judge may order the appointment of counsel to represent the eligible party.

The assignment of counsel under this plan may be made from a panel of attorneys maintained pursuant to the court's plan to implement the provisions of the Criminal Justice Act or otherwise.

The appointment will remain effective throughout all stages of a proceeding in this court, including the filing of petition for certiorari to the Supreme Court, if requested to do so by the client, but subject to the provisions of Section VI of the Court's Criminal Justice Act Plan.

### *Compensation:*

The court is very appreciative of the service of counsel taking appointments under this plan. Due to limited resources, however, compensation for attorney's fees will normally be capped at \$7,500 per representation. In addition to that reimbursement, the court will make every effort to reimburse counsel for all necessary out-of-pocket expenses. Recognizing and encouraging the pro bono aspect of these appointments, the court welcomes lawyers to waive fees and submit requests for reimbursement of expenses only.

Reimbursement for fees and reasonable and necessary out-of-pocket expenses, will be subject to limitations similar to those prescribed by the Criminal Justice Act, and will be paid from the court's Attorney Admission Fund. At the conclusion of the proceedings, counsel appointed under this plan must submit an itemized statement showing the number of hours expended, as well as out-of-pocket expenses. The chief judge, or any judge on the panel assigned to the appeal or other proceeding, may authorize payment from the Attorney Admission Fund.

Counsel appointed and compensated under this plan may not accept additional payments from their clients or anyone on their behalf.

(Amended eff. Jan. 1, 2006; eff. Jan. 1, 2007; eff. Jan. 1, 2011.)

## **ADDENDUM III. UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

### **PLAN FOR ATTORNEY DISCIPLINARY ENFORCEMENT**

#### *Section 1. Definitions.*

- 1.1 "The Court" means the United States Court of Appeals for the Tenth Circuit.
- 1.2 "Another Court" means any court of the United States, the District of Columbia, or any state, territory, or commonwealth of the United States.
- 1.3 "Serious Crime" means any felony or any lesser crime involving false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit such a lesser crime.
- 1.4 "Disciplinary Panel" means a panel of judges specially constituted to consider an attorney disciplinary matter.
- 1.5 "Attorney" means any attorney admitted to practice or who has appeared before this court.

#### *Section 2. Grounds for Discipline.*

An attorney may be disciplined by this court as a result of:

- 2.1 conviction in another court of a serious crime;
- 2.2 disbarment or suspension or reprimand by another court, with or without the attorney's consent, or the resignation from the bar of another court while an investigation into allegations of misconduct is pending;
- 2.3 any act or omission which violates the federal laws or federal statutes or Federal Rules of Appellate Procedure, the rules of this court, orders or other instructions of this court, or the Code of Professional Responsibility adopted by the highest court of any state to which the attorney is admitted to practice.

#### *Section 3. Disciplinary Sanctions.*

- 3.1 Discipline may consist of (a) disbarment, (b) suspension from practice before the court for a definite or indefinite period, (c) reprimand, (d) monetary sanction, (e) removal from the roster of attorneys eligible for appointment as court-appointed counsel, or (f) any other sanction that the court may deem appropriate.
- 3.2 The identical discipline imposed by another court may be appropriate for discipline imposed as a result of that other court's suspension or disbarment or reprimand of an attorney; however, any discipline imposed by another court will not limit the range of disciplinary sanctions available to the disciplinary panel or a panel of the court of appeals.
- 3.3 A monetary sanction imposed on disciplinary grounds is the personal responsibility of the attorney disciplined, and may not be reimbursed by a client directly or indirectly. Notice to that effect is to be sent to the client by the Clerk whenever a monetary sanction is imposed.

- 3.4 Proceedings for the award of damages, costs, expenses, or attorney's fees under 28 U.S.C. § 1927, Fed. R. App. P. 38, or 10th Cir. R. 46.5(D)(4) are not covered by this Plan.

#### *Section 4. Discipline Imposed by a Panel of the Court or by a Disciplinary Panel.*

- 4.1 A panel of the court may impose in a case pending before it any sanction other than suspension or disbarment in accordance with Section 4.2.
- 4.2 Before imposing a sanction, a panel of the court will notify the attorney of the alleged conduct which may justify sanction and afford the attorney an opportunity to be heard, in writing or in person, at the option of the panel.
- 4.3 Any matter of attorney discipline in which suspension or disbarment may be considered an appropriate sanction will be referred to a disciplinary panel or, in the case of an uncontested matter, to the chief judge or chief judge's designee. The disciplinary panel consists of three circuit judges appointed by the Chief Judge. The judge most senior in service on the court will be designated and serve as chair. If any member of the



disciplinary panel is unable to hear a particular matter, the chief judge will designate another active circuit judge as a member of the panel to hear that matter.

4.4 The disciplinary panel may at any time appoint counsel to investigate or to prosecute a disciplinary matter. Generally, the court will appoint as disciplinary counsel the disciplinary agency of the highest court of the state in which the attorney maintains his or her principal office. If no such disciplinary agency exists or such disciplinary agency declines appointment or such appointment is clearly inappropriate, this court will appoint as disciplinary counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings.

4.5 The disciplinary panel may designate a special master for purposes of conducting an evidentiary hearing. The special master may establish whatever procedural and evidentiary rules are appropriate. At the conclusion of the evidentiary hearing, the special master must promptly make a report of findings to the disciplinary panel.

### *Section 5. Duties of Clerk.*

5.1 Upon being informed that an attorney admitted to practice before this court has been either convicted of any crime or subjected to discipline by another court, the clerk will determine whether a copy of the judgment of conviction or disciplinary judgment or order has been forwarded to this court. If not, the clerk will promptly obtain a copy of the judgment of conviction or disciplinary judgment or order and file it with this court.

5.2 Whenever any person is disbarred, suspended, or reprimanded, on consent or otherwise, or otherwise disciplined by this court and is shown on the records of the court to be admitted to practice in any other jurisdiction or before any other court, the clerk will, within ten days of that disbarment, suspension, reprimand, or imposition of discipline transmit to the disciplinary authorities in such other jurisdiction or for such other court, a certified copy of the judgment or order of disbarment, suspension, censure, reprimand or discipline, as well as the last known office address of the attorney.

5.3 The clerk shall refer to the disciplinary panel or the chief judge or the chief judge's designee all information received concerning disbarments, suspensions, resignations during the pendency of misconduct investigations, and other conduct sufficient to cast doubt upon the continuing qualification of a member of the bar to practice before it.

### *Section 6. Initiation of Disciplinary Proceedings.*

6.1 Upon the receipt of a copy of a judgment, order, or other court document demonstrating that an attorney has been convicted of a serious crime, has been either suspended or disbarred or reprimanded by another court, or has resigned from the bar of another court during the pendency of a misconduct investigation, the clerk, shall issue an order directing the attorney to show cause why the court should not impose upon the attorney the discipline described in Section 3. With the order to show cause, the clerk also may send a copy of the judgment of conviction or disciplinary judgment, order, or other court document indicating the form of disciplinary action.

6.2 When misconduct or allegations of misconduct concerning the appellate process which, if substantiated, would warrant discipline on the part of an attorney comes to the attention of the clerk or a judge, whether by complaint, grievance, or otherwise, the clerk shall issue an order to show cause why discipline should not be imposed by this court. The order will set forth the alleged conduct which is the subject of the proceeding and the reason the conduct may justify such discipline. If the disciplinary panel determines that cause does not exist for disciplinary action, the proceeding will be dismissed with appropriate notice.

6.3 All orders to show cause under this section will require the attorney to respond within twenty (20) days. In the response to the order to show cause, the attorney must include a declaration of the other bars to which the attorney is admitted.

### *Section 7. Uncontested Proceedings.*

7.1 If an attorney fails to timely respond to an order to show cause the clerk will notify the chief judge or the chief judge's designee. The judge may then direct entry of an order imposing discipline as indicated.

7.2 Any attorney who is the subject of an investigation by this court into allegations of misconduct may consent to disbarment by filing with the clerk an affidavit stating that the attorney desires to consent to disbarment.

### *Section 8. Contested Proceedings.*

All contested matters, except those before a panel under Section 4.1, will be referred to a disciplinary panel.

8.1 If an attorney's response to an order to show cause specifically requests to be heard in person in defense or in mitigation, the disciplinary panel may set the matter for a hearing before a special master. If an evidentiary hearing is held before the special master, findings of fact must be promptly prepared and forwarded to the disciplinary panel and the attorney. Exceptions to the special master's findings may be filed within ten (10) days of the date the findings are transmitted by the special master to the disciplinary panel. After the disciplinary panel has resolved any timely exceptions, it may then make a decision.

8.2 If an attorney's response to an order to show cause does not specifically request to be heard in person, the disciplinary panel may then direct entry of an order imposing discipline or take other appropriate action.

8.3 A certified copy of a judgment of conviction for any crime will be prima facie evidence of the commission of that crime in any disciplinary proceeding instituted against an attorney based upon the conviction. If the conviction is subsequently reversed or vacated, any discipline imposed on the basis thereof will be promptly reviewed by the disciplinary panel, the chief judge or the chief judge's designee upon submission of a certified copy of the relevant mandate.

8.4 A certified copy of a disciplinary judgment or order demonstrating that a member of the bar has been disbarred or suspended or reprimanded by another court will be prima facie evidence that the conduct for which the discipline was imposed in fact occurred.

8.5 An attorney to whom an order to show cause is issued pursuant to Section 6 may be represented by counsel at all hearings.

8.6 The disciplinary panel may compel by subpoena the attendance of witnesses, including the attorney whose conduct is the subject of the proceeding, and the production of pertinent documents. If a hearing is held, the disciplinary panel may compel by subpoena the attendance of any witness and the production of any document reasonably designated by the disciplinary counsel and the attorney as relevant for adequate prosecution or defense or mitigation.

8.7 If disciplinary action is imposed by this court on an attorney who has entered an appearance in a representational capacity in any type of proceeding in this court, the disciplinary panel may require the attorney to:

- (a) promptly to notify all clients who are represented by the attorney in this court of the nature of the disciplinary action imposed; and
- (b) furnish sufficient evidence of compliance with (a).

### *Section 9. Suspension During Pendency of a Disciplinary Proceeding.*

9.1 Upon a sufficient showing that an attorney has been convicted of a serious crime, disbarred, suspended or reprimanded, the disciplinary panel may summarily suspend the attorney's privilege to practice before this court pending the determination of appropriate discipline.

9.2 The court or the disciplinary panel, after notice and an opportunity to be heard, may suspend an attorney's privilege to practice before this court during the course of any disciplinary investigation and proceeding.

### *Section 10. Reinstatement.*

10.1 An attorney suspended for six months or less is automatically reinstated at the end of the period of suspension upon the filing of an affidavit of compliance with the provisions of the disciplinary order. An attorney suspended for more than six months or disbarred may not resume practice until reinstated by order of the court.

10.2 An attorney who has been disbarred may not apply for reinstatement until the expiration of five years from the effective date of the disbarment.



10.3 No petition for reinstatement may be filed within one year following an adverse determination on the attorney's petition for reinstatement.

10.4 Any attorney who has been disbarred by a district court must provide proof of reinstatement to that court or demonstrate the futility of making an application to the district court.

• 10.5 The clerk refers petitions for reinstatement to the disciplinary panel. If the disciplinary panel is satisfied that reinstatement is appropriate based upon the findings of another court or otherwise, it will grant the petition. If the disciplinary panel is not so satisfied, the disciplinary panel may schedule a hearing by a special master on the petition. At the hearing, the petitioner has the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in the law required for admission to practice before this court and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or contrary to the public interest. The special master must submit a report and recommendation to the disciplinary panel who will act upon the petition.

10.6 Reinstatement may be on such terms and conditions as the disciplinary panel directs. If the attorney has been disbarred or suspended for five years or more, this may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice.

10.7 A condition precedent to reinstatement under this rule is payment of the prevailing attorney admission fee. That requirement is in addition to any other terms and conditions imposed by the disciplinary panel.

#### *Section 11. Service of Papers and Other Notices.*

11.1 Service of an order to show cause instituting formal disciplinary proceedings will be made by personal service or by certified mail addressed to the attorney at the last known office address as shown on the records or in the most recent pleading or other document filed by the attorney in the course of any proceeding before this court. Service also will be deemed complete if the notice is addressed to counsel for the attorney.

#### *Section 12. Payment of Fees and Costs.*

12.1 At the conclusion of any disciplinary investigation or prosecution, if any, under these rules, disciplinary counsel may make application to this court for an order awarding reasonable attorney's fees and reimbursing costs expended in the course of such disciplinary investigation or prosecution. The court may require the attorney to pay such reasonable attorney's fees and costs.

#### *Section 13. Access to Disciplinary Information.*

13.1 Subject to 13.3 of this plan, orders to show cause why discipline should not be imposed, orders imposing discipline, records created by the disciplinary panel, are public records and are accessible to the public in the same manner as other records of the court.

13.2 Subject to 13.3 of this plan, hearings before the special master are open to the public.

13.3 The court or the disciplinary panel may, upon application and for good cause, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order.

(Amended eff. January 1, 2006; April 1, 2007.)





# **ADDENDUM IV**

## **RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS.**

**Preface to National Misconduct Rules.**

**Preface to Tenth Circuit Misconduct Rules.**

### **Article I. General Provisions**

**Rule 1. Scope.**

**Rule 2. Effect and Construction.**

**Rule 3. Definitions.**

**Rule 4. Covered Judges.**

### **Article II. Initiation of a Complaint**

**Rule 5. Identification of a Complaint.**

**Rule 6. Filing a Complaint.**

10th Cir. Rule 6

6.1. Tenth Circuit Misconduct Rule 6.1 - Page Limitation.

6.2. Tenth Circuit Misconduct Rule 6.2 - Supporting Documentation.

6.3. Tenth Circuit Misconduct Rule 6.3 - Original Only.

**Rule 7. Where to Initiate Complaints.**

10th Cir. Rule 7

7.1. Tenth Circuit Misconduct Rule 7.1 - Filing Address.

7.2. Tenth Circuit Misconduct Rule 7.2 - E-mail and FAX Not Accepted.

**Rule 8. Action by Clerk.**

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**Rule 27. Withdrawal of Complaints and Petitions for Review.**

**Rule 28. Availability of Rules and Forms.**

**Rule 29. Effective Date.**



## Preface to National Misconduct Rules.

These Rules were promulgated by the Judicial Conference of the United States, after public comment, pursuant to 28 U.S.C. §§ 331 and 358, to establish standards and procedures for addressing complaints filed by complainants or identified by chief judges, under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.

## Preface to Tenth Circuit Misconduct Rules.

These Tenth Circuit Misconduct Rules have been promulgated by the Judicial Council of the Tenth Circuit in accord with Rule 2(a) of the nationally-mandated *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “National Rules”). These rules are supplemental to the National Rules, and are numbered to pertain to specific National Rules. These Tenth Circuit Misconduct Rules are hereby adopted effective August 5, 2009.

## ARTICLE I. GENERAL PROVISIONS

### Rule 1.

#### Scope.

These Rules govern proceedings under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364 (the Act), to determine whether a covered judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.

**Commentary on Rule 1** — In September 2006, the Judicial Conduct and Disability Act Study Committee, appointed in 2004 by Chief Justice Rehnquist and known as the “*Breyer Committee*,” presented a report, known as the “*Breyer Committee Report*,” 239 F.R.D. 116 (Sept. 2006), to Chief Justice Roberts that evaluated implementation of the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364. The *Breyer Committee* had been formed in response to criticism from the public and the Congress regarding the effectiveness of the Act’s implementation. The Executive Committee of the Judicial Conference directed the Judicial Conference Committee on Judicial Conduct and Disability to consider the recommendations made by the *Breyer Committee* and to report on their implementation to the Conference.

The *Breyer Committee* found that it could not evaluate implementation of the Act without establishing interpretive standards, *Breyer Committee Report*, 239 F.R.D. at 132, and that a major problem faced by chief judges in implementing the Act was the lack of authoritative interpretive standards. *Id.* at 212-15. The *Breyer Committee* then established standards to guide its evaluation, some of which were new formulations and some of which were taken from the “*Illustrative Rules Governing Complaints of Judicial Misconduct and Disability*,” discussed below. The principal standards used by the *Breyer Committee* are in Appendix E of its Report. *Id.* at 238.

Based on the findings of the *Breyer Committee*, the Judicial Conference Committee on Judicial Conduct and Disability concluded that there was a need for the Judicial Conference to exercise its power under Section 358 of the Act to fashion standards guiding the various officers and bodies who must exercise responsibility under the Act. To that end, the Judicial Conference Committee proposed rules that were based largely on Appendix E of the *Breyer Committee Report* and the *Illustrative Rules*.

The *Illustrative Rules* were originally prepared in 1986 by the Special Committee of the Conference of Chief Judges of the United States Courts of Appeals, and were subsequently revised and amended, most recently in 2000, by the predecessor to the Committee on Judicial Conduct and Disability. The *Illustrative Rules* were adopted, with minor varia-

tions, by circuit judicial councils, to govern complaints under the Judicial Conduct and Disability Act.

After being submitted for public comment pursuant to 28 U.S.C. § 358(c), the present Rules were promulgated by the Judicial Conference on March 11, 2008.

**10th Cir. Rule 1**

No local rule.

**Rule 2.**

**Effect and Construction.**

(a) *Generally.* These Rules are mandatory; they supersede any conflicting judicial-council rules. Judicial councils may promulgate additional rules to implement the Act as long as those rules do not conflict with these Rules.

(b) *Exception.* A Rule will not apply if, when performing duties authorized by the Act, a chief judge, a special committee, a judicial council, the Judicial Conference Committee on Judicial Conduct and Disability, or the Judicial Conference of the United States expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.

**Commentary on Rule 2** — Unlike the Illustrative Rules, these Rules provide mandatory and nationally uniform provisions governing the substantive and procedural aspects of misconduct and disability proceedings under the Act. The mandatory nature of these Rules is authorized by 28 U.S.C. § 358(a) and (c). Judicial councils retain the power to promulgate rules consistent with these Rules. For example, a local rule may authorize the electronic distribution of materials pursuant to Rule 8(b).

Rule 2(b) recognizes that unforeseen and exceptional circumstances may call for a different approach in particular cases.

**10th Cir. Rule 2**

No local rule.

**Rule 3.**

**Definitions.**

(a) *Chief Judge.* “Chief judge” means the chief judge of a United States Court of Appeals, of the United States Court of International Trade, or of the United States Court of Federal Claims.

(b) *Circuit Clerk.* “Circuit clerk” means a clerk of a United States court of appeals, the clerk of the United States Court of International Trade, the clerk of the United States Court of Federal Claims, or the circuit executive of the United States Court of Appeals for the Federal Circuit.

(c) *Complaint.* A complaint is:

(1) a document that, in accordance with Rule 6, is filed by any person in his or her individual capacity or on behalf of a professional organization; or

(2) information from any source, other than a document described in (c)(1), that gives a chief judge probable cause to believe that a covered judge, as defined in Rule 4, has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.

(d) *Courts of Appeals, District Court, and District Judge.* “Courts of appeals,” “district court,” and “district judge,” where appropriate, include the United States Court of Federal Claims, the United States Court of International Trade, and the judges thereof.

(e) *Disability.* “Disability” is a temporary or permanent condition rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or a severe impairment of cognitive abilities.



(f) *Judicial Council and Circuit.* “Judicial council” and “circuit,” where appropriate, include any courts designated in 28 U.S.C. § 363.

(g) *Magistrate Judge.* “Magistrate judge,” where appropriate, includes a special master appointed by the Court of Federal Claims under 42 U.S.C. § 300aa-12(c).

(h) *Misconduct.* Cognizable misconduct:

(1) is conduct prejudicial to the effective and expeditious administration of the business of the courts. Misconduct includes, but is not limited to:

(A) using the judge’s office to obtain special treatment for friends or relatives;

(B) accepting bribes, gifts, or other personal favors related to the judicial office;

(C) having improper discussions with parties or counsel for one side in a case;

(D) treating litigants or attorneys in a demonstrably egregious and hostile manner;

(E) engaging in partisan political activity or making inappropriately partisan statements;

(F) soliciting funds for organizations; or

(G) violating other specific, mandatory standards of judicial conduct, such as those pertaining to restrictions on outside income and requirements for financial disclosure.

(2) is conduct occurring outside the performance of official duties if the conduct might have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.

(3) does not include:

(A) an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse, without more, is merits-related. If the decision or ruling is alleged to be the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it attacks the merits.

(B) an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.

(i) *Subject Judge.* “Subject judge” means any judge described in Rule 4 who is the subject of a complaint.

**Commentary on Rule 3** — Rule 3 is derived and adapted from the *Breyer Committee Report* and the *Illustrative Rules*.

Unless otherwise specified or the context otherwise indicates, the term “complaint” is used in these Rules to refer both to complaints identified by a chief judge under Rule 5 and to complaints filed by complainants under Rule 6.

Under the Act, a “complaint” may be filed by “any person” or “identified” by a chief judge. See 28 U.S.C. § 351(a) and (b). Under Rule 3(c)(1), complaints may be submitted by a person, in his or her individual capacity, or by a professional organization. Generally, the word “complaint” brings to mind the commencement of an adversary proceeding in which the contending parties are left to present the evidence and legal arguments, and judges play the role of an essentially passive arbiter. The Act, however, establishes an administrative, inquisitorial process. For example, even absent a complaint under Rule 6, chief judges are expected in some circumstances to trigger the process — “identify a complaint,” see 28 U.S.C. § 351(b) and Rule 5 — and conduct an investigation without becoming a party. See 28 U.S.C. § 352(a); *Breyer Committee Report*, 239 F.R.D. at 214; *Illustrative Rule 2(j)*. Even when a complaint is filed by someone other than the chief judge, the complainant lacks many rights that a litigant would have, and the chief judge, instead of being limited to the “four corners of the complaint,” must, under Rule 11,



proceed as though misconduct or disability has been alleged where the complainant reveals information of misconduct or disability but does not claim it as such. See *Breyer Committee Report*, 239 F.R.D. at 183-84.

An allegation of misconduct or disability filed under Rule 6 is a “complaint,” and the Rule so provides in subsection (c)(1). However, both the nature of the process and the use of the term “identify” suggest that the word “complaint” covers more than a document formally triggering the process. The process relies on chief judges considering known information and triggering the process when appropriate. “Identifying” a “complaint,” therefore, is best understood as the chief judge’s concluding that information known to the judge constitutes probable cause to believe that misconduct occurred or a disability exists, whether or not the information is framed as, or intended to be an accusation. This definition is codified in (c)(2).

Rule 3(e) relates to disability and provides only the most general definition, recognizing that a fact-specific approach is the only one available.

The phrase “prejudicial to the effective and expeditious administration of the business of the Courts” is not subject to precise definition, and subsection (h)(1) therefore provides some specific examples. Although the Code of Conduct for United States Judges may be informative, its main precepts are highly general; the Code is in many potential applications aspirational rather than a set of disciplinary rules. Ultimately, the responsibility for determining what constitutes misconduct under the statute is the province of the judicial council of the circuit subject to such review and limitations as are ordained by the statute and by these Rules.

Even where specific, mandatory rules exist — for example, governing the receipt of gifts by judges, outside earned income, and financial disclosure obligations — the distinction between the misconduct statute and the specific, mandatory rules must be borne in mind. For example, an inadvertent, minor violation of any one of these Rules, promptly remedied when called to the attention of the judge, might still be a violation but might not rise to the level of misconduct under the statute. By contrast, a pattern of such violations of the Code might well rise to the level of misconduct.

An allegation can meet the statutory standard even though the judge’s alleged conduct did not occur in the course of the performance of official duties. The Code of Conduct for United States Judges expressly covers a wide range of extra-official activities, and some of these activities may constitute misconduct. For example, allegations that a judge solicited funds for a charity or participated in a partisan political event are cognizable under the Act.

On the other hand, judges are entitled to some leeway in extra-official activities. For example, misconduct may not include a judge being repeatedly and publicly discourteous to a spouse (not including physical abuse) even though this might cause some reasonable people to have diminished confidence in the courts. Rule 3(h)(2) states that conduct of this sort is covered, for example, when it might lead to a “substantial and widespread” lowering of such confidence.

Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii), in excluding from the definition of misconduct allegations “[d]irectly related to the merits of a decision or procedural ruling.” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the complaint procedure is not used to collaterally attack the substance of a judge’s ruling. Any allegation that calls into question the correctness of an official action of a judge — without more — is merits-related. The phrase “decision or procedural ruling” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation. Similarly, an allegation that a judge had incorrectly declined to approve a Criminal Justice Act voucher is merits-related under this standard.

Conversely, an allegation — however unsupported — that a judge conspired with a prosecutor to make a particular ruling is not merits-related, even though it “relates” to a ruling in a colloquial sense. Such an allegation attacks the propriety of conspiring with the prosecutor and goes beyond a challenge to the correctness — “the merits” — of the ruling

itself. An allegation that a judge ruled against the complainant because the complainant is a member of a particular racial or ethnic group, or because the judge dislikes the complainant personally, is also not merits-related. Such an allegation attacks the propriety of arriving at rulings with an illicit or improper motive. Similarly, an allegation that a judge used an inappropriate term to refer to a class of people is not merits-related even if the judge used it on the bench or in an opinion; the correctness of the judge's rulings is not at stake. An allegation that a judge treated litigants or attorneys in a demonstrably egregious and hostile manner while on the bench is also not merits-related.

The existence of an appellate remedy is usually irrelevant to whether an allegation is merits-related. The merits-related ground for dismissal exists to protect judges' independence in making rulings, not to protect or promote the appellate process. A complaint alleging an incorrect ruling is merits-related even though the complainant has no recourse from that ruling. By the same token, an allegation that is otherwise cognizable under the Act should not be dismissed merely because an appellate remedy appears to exist (for example, vacating a ruling that resulted from an improper *ex parte* communication). However, there may be occasions when appellate and misconduct proceedings overlap, and consideration and disposition of a complaint under these Rules may be properly deferred by a chief judge until the appellate proceedings are concluded in order to avoid, *inter alia*, inconsistent decisions.

Because of the special need to protect judges' independence in deciding what to say in an opinion or ruling, a somewhat different standard applies to determine the merits-relatedness of a non-frivolous allegation that a judge's language in a ruling reflected an improper motive. If the judge's language was relevant to the case at hand — for example a statement that a claim is legally or factually “frivolous” — then the judge's choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive. If, on the other hand, the challenged language does not seem relevant on its face, then an additional inquiry under Rule 11 is necessary.

With regard to Rule 3(h)(3)(B), a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge — in other words, assigning a low priority to deciding the particular case. But, by the same token, an allegation of a habitual pattern of delay in a significant number of unrelated cases, or an allegation of deliberate delay in a single case arising out of an illicit motive, is not merits-related.

The remaining subsections of Rule 3 provide technical definitions clarifying the application of the Rules to the various kinds of courts covered.

### 10th Cir. Rule 3

No local rule.

### **Rule 4. Covered Judges.**

A complaint under these Rules may concern the actions or capacity only of judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.

**Commentary on Rule 4** — This Rule tracks the Act. Rule 8(c) and (d) contain provisions as to the handling of complaints against persons not covered by the Act, such as other court personnel, or against both covered judges and noncovered persons.

### 10th Cir. Rule 4

No local rule.



## ARTICLE II. INITIATION OF A COMPLAINT

### Rule 5.

#### Identification of a Complaint.

(a) *Identification.* When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. This Rule is subject to Rule 7.

(b) *Noncompliance with Rule 6(d).* Rule 6 complaints that do not comply with the requirements of Rule 6(d) must be considered under this Rule.

**Commentary on Rule 5** — This Rule is adapted from the *Breyer* Committee Report, 239 F.R.D. at 245-46.

The Act authorizes the chief judge, by written order stating reasons, to identify a complaint and thereby dispense with the filing of a written complaint. See 28 U.S.C. § 351(b). Under Rule 5, when a chief judge becomes aware of information constituting reasonable grounds to inquire into possible misconduct or disability on the part of a covered judge, and no formal complaint has been filed, the chief judge has the power in his or her discretion to begin an appropriate inquiry. A chief judge's decision whether to informally seek a resolution and/or to identify a complaint is guided by the results of that inquiry. If the chief judge concludes that there is probable cause to believe that misconduct has occurred or a disability exists, the chief judge may seek an informal resolution, if feasible, and if failing in that, may identify a complaint. Discretion is accorded largely for the reasons police officers and prosecutors have discretion in making arrests or bringing charges. The matter may be trivial and isolated, based on marginal evidence, or otherwise highly unlikely to lead to a misconduct or disability finding. On the other hand, if the inquiry leads the chief judge to conclude that there is clear and convincing evidence of misconduct or a disability, and no satisfactory informal resolution has been achieved or is feasible, the chief judge is required to identify a complaint.

An informal resolution is one agreed to by the subject judge and found satisfactory by the chief judge. Because an informal resolution under Rule 5 reached before a complaint is filed under Rule 6 will generally cause a subsequent Rule 6 complaint alleging the identical matter to be concluded, see Rule 11(d), the chief judge must be sure that the resolution is fully appropriate before endorsing it. In doing so, the chief judge must balance the seriousness of the matter against the particular judge's alacrity in addressing the issue. The availability of this procedure should encourage attempts at swift remedial action before a formal complaint is filed.

When a complaint is identified, a written order stating the reasons for the identification must be provided; this begins the process articulated in Rule 11. Rule 11 provides that once the chief judge has identified a complaint, the chief judge, subject to the disqualification provisions of Rule 25, will perform, with respect to that complaint, all functions assigned to the chief judge for the determination of complaints filed by a complainant.

In high-visibility situations, it may be desirable for the chief judge to identify a complaint without first seeking an informal resolution (and then, if the circumstances warrant, dismiss or conclude the identified complaint without appointment of a special committee) in order to assure the public that the allegations have not been ignored.

A chief judge's decision not to identify a complaint under Rule 5 is not appealable and is subject to Rule 3(h)(3)(A), which excludes merits-related complaints from the definition of misconduct.



A chief judge may not decline to identify a complaint solely on the basis that the unfiled allegations could be raised by one or more persons in a filed complaint, but none of these persons has opted to do so.

Subsection (a) concludes by stating that this Rule is “subject to Rule 7.” This is intended to establish that only: (i) the chief judge of the home circuit of a potential subject judge, or (ii) the chief judge of a circuit in which misconduct is alleged to have occurred in the course of official business while the potential subject judge was sitting by designation, shall have the power or a duty under this Rule to identify a complaint.

Subsection (b) provides that complaints filed under Rule 6 that do not comply with the requirements of Rule 6(d), must be considered under this Rule. For instance, if a complaint has been filed but the form submitted is unsigned, or the truth of the statements therein are not verified in writing under penalty of perjury, then a chief judge must nevertheless consider the allegations as known information, and proceed to follow the process described in Rule 5(a).

### 10th Cir. Rule 5

No local rule.

## **Rule 6. Filing a Complaint.**

(a) *Form.* A complainant may use the form reproduced in the appendix to these Rules or a form designated by the rules of the judicial council in the circuit in which the complaint is filed. A complaint form is also available on each court of appeals’ website or may be obtained from the circuit clerk or any district court or bankruptcy court within the circuit. A form is not necessary to file a complaint, but the complaint must be written and must include the information described in (b).

(b) *Brief Statement of Facts.* A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:

- (1) what happened;
- (2) when and where the relevant events happened;
- (3) any information that would help an investigator check the facts; and
- (4) for an allegation of disability, any additional facts that form the basis of that allegation.

(c) *Legibility.* A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted for filing.

(d) *Complainant’s Address and Signature; Verification.* The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the complaint will be accepted for filing, but it will be reviewed under only Rule 5(b).

(e) *Number of Copies; Envelope Marking.* The complainant shall provide the number of copies of the complaint required by local rule. Each copy should be in an envelope marked “Complaint of Misconduct” or “Complaint of Disability.” The envelope must not show the name of any subject judge.

**Commentary on Rule 6** — The Rule is adapted from the Illustrative Rules and is self-explanatory.

### 10th Cir. Rule 6

#### **Rule 6.1. Tenth Circuit Misconduct Rule 6.1 — Page Limitation.**

The “brief statement of facts” in support of a complaint described in National Rule 6(b) should not exceed five pages in length, whether typed or hand-written. If a complainant believes that more than five pages are needed to set out a “concise statement that details the

specific facts on which the claim of misconduct or disability is based,” *id.*, the complainant should submit a proposed statement of facts to the Circuit Executive, who will determine whether the complaint will be filed. If the Circuit Executive determines that the complaint will not be filed as proposed, the complainant will be provided an opportunity to cure the complaint, i.e. reduce the statement of facts to five pages.

### **Rule 6.2. Tenth Circuit Misconduct Rule 6.2 — Supporting Documentation.**

Facts specifically and clearly alleged in a complaint will rarely need the support of additional documentation. If a complainant considers supporting documentation necessary, the complainant should take care to include only documentation that is required to support the specific facts alleged. Excess or irrelevant documentation will be returned to the complainant.

### **Rule 6.3. Tenth Circuit Misconduct Rule 6.3 — Original Only.**

In connection with National Rule 6(e), the Tenth Circuit requires that only one original complaint be filed, along with one set of accompanying documents, if any.

## **Rule 7.**

### **Where to Initiate Complaints.**

(a) *Where to File.* Except as provided in (b),

(1) a complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.

(2) a complaint against a judge of the United States Court of International Trade or the United States Court of Federal Claims must be filed with the respective clerk of that court.

(3) a complaint against a judge of the United States Court of Appeals for the Federal Circuit must be filed with the circuit executive of that court.

(b) *Misconduct in Another Circuit; Transfer.* If a complaint alleges misconduct in the course of official business while the subject judge was sitting on a court by designation under 28 U.S.C. §§ 291-293 and 294(d), the complaint may be filed or identified with the circuit clerk of that circuit or of the subject judge’s home circuit. The proceeding will continue in the circuit of the first-filed or first-identified complaint. The judicial council of the circuit where the complaint was first filed or first identified may transfer the complaint to the subject judge’s home circuit or to the circuit where the alleged misconduct occurred, as the case may be.

**Commentary on Rule 7** - Title 28 U.S.C. § 351 states that complaints are to be filed with “the clerk of the court of appeals for the circuit.” However, in many circuits, this role is filled by circuit executives. Accordingly, the term “circuit clerk,” as defined in Rule 3(b) and used throughout these Rules, applies to circuit executives.

Section 351 uses the term “the circuit” in a way that suggests that either the home circuit of the subject judge or the circuit in which misconduct is alleged to have occurred is the proper venue for complaints. With an exception for judges sitting by designation, the Rule requires the identifying or filing of a misconduct or disability complaint in the circuit in which the judge holds office, largely based on the administrative perspective of the Act. Given the Act’s emphasis on the future conduct of the business of the courts, the circuit in which the judge holds office is the appropriate forum because that circuit is likely best able to influence a judge’s future behavior in constructive ways.

However, when judges sit by designation, the non-home circuit has a strong interest in redressing misconduct in the course of official business, and where allegations also involve a member of the bar — *ex parte* contact between an attorney and a judge, for example — it may often be desirable to have the judicial and bar misconduct proceedings take place in the same venue. Rule 7(b), therefore, allows transfer to, or filing or identification of a



complaint in, the non-home circuit. The proceeding may be transferred by the judicial council of the filing or identified circuit to the other circuit.

### 10th Cir. Rule 7

#### **Rule 7.1. Tenth Circuit Misconduct Rule 7.1 — Filing Address.**

Complaints filed with the Tenth Circuit pursuant to National Rule 7(a)(1) should be mailed or delivered to:

Office of the Circuit Executive  
United States Courts for the Tenth Circuit  
Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257

#### **Rule 7.2. Tenth Circuit Misconduct Rule 7.2 — E-mail and FAX Not Accepted.**

Complaints and supporting or supplementary documentation will not be accepted for filing via email or fax.

### **Rule 8.**

#### **Action by Clerk.**

(a) *Receipt of Complaint.* Upon receiving a complaint against a judge filed under Rule 5 or 6, the circuit clerk must open a file, assign a docket number according to a uniform numbering scheme promulgated by the Judicial Conference Committee on Judicial Conduct and Disability, and acknowledge the complaint's receipt.

(b) *Distribution of Copies.* The clerk must promptly send copies of a complaint filed under Rule 6 to the chief judge or the judge authorized to act as chief judge under Rule 25(f), and copies of complaints filed under Rule 5 or 6 to each subject judge. The clerk must retain the original complaint. Any further distribution should be as provided by local rule.

(c) *Complaints Against Noncovered Persons.* If the clerk receives a complaint about a person not holding an office described in Rule 4, the clerk must not accept the complaint for filing under these Rules.

(d) *Receipt of Complaint about a Judge and Another Noncovered Person.* If a complaint is received about a judge described in Rule 4 and a person not holding an office described in Rule 4, the clerk must accept the complaint for filing under these Rules only with regard to the judge and must inform the complainant of the limitation.

**Commentary on Rule 8** — This Rule is adapted from the Illustrative Rules and is largely self-explanatory.

The uniform docketing scheme described in subsection (a) should take into account potential problems associated with a complaint that names multiple judges. One solution may be to provide separate docket numbers for each subject judge. Separate docket numbers would help avoid difficulties in tracking cases, particularly if a complaint is dismissed with respect to some, but not all of the named judges.

Complaints against noncovered persons are not to be accepted for processing under these Rules but may, of course, be accepted under other circuit rules or procedures for grievances.

### 10th Cir. Rule 8

#### **Rule 8.1. Tenth Circuit Misconduct Rule 8.1 — Office of the Circuit Executive.**

The Office of the Circuit Executive processes all misconduct matters. The term "circuit clerk" used throughout the National Rules will refer to the Circuit Executive of the Tenth Circuit and his/her staff.



**Rule 8.2. Tenth Circuit Misconduct Rule 8.2 — Distribution.**

Internal distribution of complaints, pursuant to National Rule 8(b), will be made as follows: If a district or magistrate judge is complained about, a copy of the complaint will be sent, in addition to those individuals identified in National Rule 8(b), to the chief judge of the district court in which the district or magistrate judge holds his or her appointment. If a bankruptcy judge is complained about, copies of the complaint will also be sent to the chief judge of the appropriate district and bankruptcy courts. However, and similar to the provisions of National Rule 25(f), if the chief judge of a district or bankruptcy court is a subject of a complaint, the copy ordinarily sent to that chief judge will be sent to the judge of such court in regular active service who is most senior in date of commission among those who are not subjects of the complaint.

**Rule 8.3. Tenth Circuit Misconduct Rule 8.3 — Complaints against Noncovered Persons.**

Complaints against noncovered person, discussed in National Rule 8(c), will be returned to the complainant(s) who sent them for filing, along with notice of the reasons the complaint was not accepted for filing.

**Rule 9.****Time for Filing or Identifying a Complaint.**

A complaint may be filed or identified at any time. If the passage of time has made an accurate and fair investigation of a complaint impractical, the complaint must be dismissed under Rule 11(c)(1)(E).

**Commentary on Rule 9** — This Rule is adapted from the Act, 28 U.S.C. §§ 351, 352(b)(1)(A)(iii), and the Illustrative Rules.

**10th Cir. Rule 9**

No local rule.

**Rule 10.****Abuse of the Complaint Procedure.**

(a) *Abusive Complaints.* A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, a judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

(b) *Orchestrated Complaints.* When many essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order instructing the circuit clerk to accept only a certain number of such complaints for filing and to refuse to accept further ones. The clerk must send a copy of any such order to anyone whose complaint was not accepted.

**Commentary on Rule 10** — This Rule is adapted from the Illustrative Rules.

Rule 10(a) provides a mechanism for a judicial council to restrict the filing of further complaints by a single complainant who has abused the complaint procedure. In some instances, however, the complaint procedure may be abused in a manner for which the remedy provided in Rule 10(a) may not be appropriate. For example, some circuits have been inundated with submissions of dozens or hundreds of essentially identical complaints against the same judge or judges, all submitted by different complainants. In many of these instances, persons with grievances against a particular judge or judges used the Internet or other technology to orchestrate mass complaint-filing campaigns against them. If each

complaint submitted as part of such a campaign were accepted for filing and processed according to these Rules, there would be a serious drain on court resources without any benefit to the adjudication of the underlying merits.

A judicial council may, therefore, respond to such mass filings under Rule 10(b) by declining to accept repetitive complaints for filing, regardless of the fact that the complaints are nominally submitted by different complainants. When the first complaint or complaints have been dismissed on the merits, and when further, essentially identical submissions follow, the judicial council may issue a second order noting that these are identical or repetitive complaints, directing the circuit clerk not to accept these complaints or any further such complaints for filing, and directing the clerk to send each putative complainant copies of both orders.

**10th Cir. Rule 10**

No local rule.

**ARTICLE III. REVIEW OF A COMPLAINT BY THE CHIEF JUDGE**

**Rule 11.**

**Review by the Chief Judge.**

(a) *Purpose of Chief Judge's Review.* When a complaint is identified by the chief judge or is filed, the chief judge must review it unless the chief judge is disqualified under Rule 25. If the complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the chief judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing the complaint, the chief judge must determine whether it should be:

- (1) dismissed;
- (2) concluded on the ground that voluntary corrective action has been taken;
- (3) concluded because intervening events have made action on the complaint no longer necessary; or
- (4) referred to a special committee.

(b) *Inquiry by Chief Judge.* In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may review transcripts or other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue.

(c) *Dismissal.*

(1) *Allowable grounds.* A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint:

(A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of judicial office;

(B) is directly related to the merits of a decision or procedural ruling;

(C) is frivolous;

(D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;

(E) is based on allegations which are incapable of being established through investigation;

(F) has been filed in the wrong circuit under Rule 7; or

(G) is otherwise not appropriate for consideration under the Act.

(2) *Disallowed grounds.* A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.



(d) *Corrective Action.* The chief judge may conclude the complaint proceeding in whole or in part if:

(1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6, or

(2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.

(e) *Intervening Events.* The chief judge may conclude the complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible.

(f) *Appointment of Special Committee.* If some or all of the complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

(g) *Notice of Chief Judge's Action; Petitions for Review.*

(1) *When special committee is appointed.* If a special committee is appointed, the chief judge must notify the complainant and the subject judge that the matter has been referred to a special committee and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Judicial Conference Committee on Judicial Conduct and Disability.

(2) *When chief judge disposes of complaint without appointing special committee.* If the chief judge disposes of the complaint under Rule 11(c), (d), or (e), the chief judge must prepare a supporting memorandum that sets forth the reasons for the disposition. Except as authorized by 28 U.S.C. § 360, the memorandum must not include the name of the complainant or of the subject judge. The order and the supporting memorandum, which may be one document, must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.

(3) *Right of petition for review.* If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and subject judge must be notified of the right to petition the judicial council for review of the disposition, as provided in Rule 18. If a petition for review is filed, the chief judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the circuit clerk for transmittal to the judicial council.

(h) *Public Availability of Chief Judge's Decision.* The chief judge's decision must be made public to the extent, at the time, and in the manner provided in Rule 24.

**Commentary on Rule 11** — Subsection (a) lists the actions available to a chief judge in reviewing a complaint. This subsection provides that where a complaint has been filed under Rule 6, the ordinary doctrines of waiver do not apply. A chief judge must identify as a complaint any misconduct or disability issues raised by the factual allegations of the complaint even if the complainant makes no such claim with regard to those issues. For example, an allegation limited to misconduct in fact-finding that mentions periods during a trial when the judge was asleep must be treated as a complaint regarding disability. Some formal order giving notice of the expanded scope of the proceeding must be given to the subject judge.

Subsection (b) describes the nature of the chief judge's inquiry. It is based largely on the Breyer Committee Report, 239 F.R.D. at 243-45. The Act states that dismissal is appropriate "when a limited inquiry . . . demonstrates that the allegations in the complaint lack any factual foundation or are conclusively refuted by objective evidence." 28 U.S.C. § 352(b)(1)(B). At the same time, however, Section 352(a) states that "[t]he chief judge shall not undertake to make findings of fact about any matter that is reasonably in dispute."



These two statutory standards should be read together, so that a matter is not “reasonably” in dispute if a limited inquiry shows that the allegations do not constitute misconduct or disability, that they lack any reliable factual foundation, or that they are conclusively refuted by objective evidence.

In conducting a limited inquiry under subsection (b), the chief judge must avoid determinations of reasonably disputed issues, including reasonably disputed issues as to whether the facts alleged constitute misconduct or disability, which are ordinarily left to a special committee and the judicial council. An allegation of fact is ordinarily not “refuted” simply because the subject judge denies it. The limited inquiry must reveal something more in the way of refutation before it is appropriate to dismiss a complaint that is otherwise cognizable. If it is the complainant’s word against the subject judge’s — in other words, there is simply no other significant evidence of what happened or of the complainant’s unreliability — then there must be a special-committee investigation. Such a credibility issue is a matter “reasonably in dispute” within the meaning of the Act.

However, dismissal following a limited inquiry may occur when the complaint refers to transcripts or to witnesses and the chief judge determines that the transcripts and witnesses all support the subject judge. *Breyer Committee Report*, 239 F.R.D. at 243. For example, consider a complaint alleging that the subject judge said X, and the complaint mentions, or it is independently clear, that five people may have heard what the judge said. *Id.* The chief judge is told by the subject judge and one witness that the judge did not say X, and the chief judge dismisses the complaint without questioning the other four possible witnesses. *Id.* In this example, the matter remains reasonably in dispute. If all five witnesses say the judge did not say X, dismissal is appropriate, but if potential witnesses who are reasonably accessible have not been questioned, then the matter remains reasonably in dispute. *Id.*

Similarly, under (c)(1)(A), if it is clear that the conduct or disability alleged, even if true, is not cognizable under these Rules, the complaint should be dismissed. If that issue is reasonably in dispute, however, dismissal under (c)(1)(A) is inappropriate.

Essentially, the standard articulated in subsection (b) is that used to decide motions for summary judgment pursuant to Fed. R. Civ. P. 56. Genuine issues of material fact are not resolved at the summary judgment stage. A material fact is one that “might affect the outcome of the suit under the governing law,” and a dispute is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). Similarly, the chief judge may not resolve a genuine issue concerning a material fact or the existence of misconduct or a disability when conducting a limited inquiry pursuant to subsection (b).

Subsection (c) describes the grounds on which a complaint may be dismissed. These are adapted from the Act, 28 U.S.C. § 352(b), and the *Breyer Committee Report*, 239 F.R.D. at 239-45. Subsection (c)(1)(A) permits dismissal of an allegation that, even if true, does not constitute misconduct or disability under the statutory standard. The proper standards are set out in Rule 3 and discussed in the Commentary on that Rule. Subsection (c)(1)(B) permits dismissal of complaints related to the merits of a decision by a subject judge; this standard is also governed by Rule 3 and its accompanying Commentary.

Subsections (c)(1)(C)-(E) implement the statute by allowing dismissal of complaints that are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation.” 28 U.S.C. § 352(b)(1)(A)(iii).

Dismissal of a complaint as “frivolous,” under Rule 11(c)(1)(C), will generally occur without any inquiry beyond the face of the complaint. For instance, when the allegations are facially incredible or so lacking in indicia of reliability that no further inquiry is warranted, dismissal under this subsection is appropriate.

A complaint warranting dismissal under Rule 11(c)(1)(D) is illustrated by the following example. Consider a complainant who alleges an impropriety and asserts that he knows of it because it was observed and reported to him by a person who is identified. The judge denies that the event occurred. When contacted, the source also denies it. In such a case, the chief judge’s proper course of action may turn on whether the source had any role in the allegedly improper conduct. If the complaint was based on a lawyer’s statement that he

or she had an improper ex parte contact with a judge, the lawyer's denial of the impropriety might not be taken as wholly persuasive, and it would be appropriate to conclude that a real factual issue is raised. On the other hand, if the complaint quoted a disinterested third party and that disinterested party denied that the statement had been made, there would be no value in opening a formal investigation. In such a case, it would be appropriate to dismiss the complaint under Rule 11(c)(1)(D).

Rule 11(c)(1)(E) is intended, among other things, to cover situations when no evidence is offered or identified, or when the only identified source is unavailable. *Breyer Committee Report*, 239 F.R.D. at 243. For example, a complaint alleges that an unnamed attorney told the complainant that the judge did X. Id. The subject judge denies it. The chief judge requests that the complainant (who does not purport to have observed the judge do X) identify the unnamed witness, or that the unnamed witness come forward so that the chief judge can learn the unnamed witness's account. Id. The complainant responds that he has spoken with the unnamed witness, that the unnamed witness is an attorney who practices in federal court, and that the unnamed witness is unwilling to be identified or to come forward. Id. at 243-44. The allegation is then properly dismissed as containing allegations that are incapable of being established through investigation. Id.

If, however, the situation involves a reasonable dispute over credibility, the matter should proceed. For example, the complainant alleges an impropriety and alleges that he or she observed it and that there were no other witnesses; the subject judge denies that the event occurred. Unless the complainant's allegations are facially incredible or so lacking indicia of reliability warranting dismissal under Rule 11(c)(1)(C), a special committee must be appointed because there is a material factual question that is reasonably in dispute.

Dismissal is also appropriate when a complaint is filed so long after an alleged event that memory loss, death, or changes to unknown residences prevent a proper investigation.

Subsection (c)(2) indicates that the investigative nature of the process prevents the application of claim preclusion principles where new and material evidence becomes available. However, it also recognizes that at some point a renewed investigation may constitute harassment of the subject judge and should be foregone, depending of course on the seriousness of the issues and the weight of the new evidence.

Rule 11(d) implements the Act's provision for dismissal if voluntary appropriate corrective action has been taken. It is largely adapted from the *Breyer Committee Report*, 239 F.R.D. 244-45. The Act authorizes the chief judge to conclude the proceedings if "appropriate corrective action has been taken." 28 U.S.C. § 352(b)(2). Under the Rule, action taken after the complaint is filed is "appropriate" when it acknowledges and remedies the problem raised by the complaint. *Breyer Committee Report*, 239 F.R.D. at 244. Because the Act deals with the conduct of judges, the emphasis is on correction of the judicial conduct that was the subject of the complaint. Id. Terminating a complaint based on corrective action is premised on the implicit understanding that voluntary self-correction or redress of misconduct or a disability is preferable to sanctions. Id. The chief judge may facilitate this process by giving the subject judge an objective view of the appearance of the judicial conduct in question and by suggesting appropriate corrective measures. Id. Moreover, when corrective action is taken under Rule 5 satisfactory to the chief judge before a complaint is filed, that informal resolution will be sufficient to conclude a subsequent complaint based on the identical conduct. "Corrective action" must be voluntary action taken by the subject judge. *Breyer Committee Report*, 239 F.R.D. at 244. A remedial action directed by the chief judge or by an appellate court without the participation of the subject judge in formulating the directive or without the subject judge's subsequent agreement to such action does not constitute the requisite voluntary corrective action. Id. Neither the chief judge nor an appellate court has authority under the Act to impose a formal remedy or sanction; only the judicial council can impose a formal remedy or sanction under 28 U.S.C. § 354(a)(2). Id. Compliance with a previous council order may serve as corrective action allowing conclusion of a later complaint about the same behavior. Id.

Where a judge's conduct has resulted in identifiable, particularized harm to the complainant or another individual, appropriate corrective action should include steps taken by that judge to acknowledge and redress the harm, if possible, such as by an apology, recusal



from a case, or a pledge to refrain from similar conduct in the future. *Id.* While the Act is generally forward-looking, any corrective action should, to the extent possible, serve to correct a specific harm to an individual, if such harm can reasonably be remedied. *Id.* In some cases, corrective action may not be “appropriate” to justify conclusion of a complaint unless the complainant or other individual harmed is meaningfully apprised of the nature of the corrective action in the chief judge’s order, in a direct communication from the subject judge, or otherwise. *Id.*

Voluntary corrective action should be proportionate to any plausible allegations of misconduct in the complaint. The form of corrective action should also be proportionate to any sanctions that a judicial council might impose under Rule 20(b), such as a private or public reprimand or a change in case assignments. *Breyer Committee Report*, 239 F.R.D. at 244-45. In other words, minor corrective action will not suffice to dispose of a serious matter. *Id.*

Rule 11(e) implements Section 352(b)(2) of the Act, which permits the chief judge to “conclude the proceeding,” if “action on the complaint is no longer necessary because of intervening events,” such as a resignation from judicial office. Ordinarily, however, stepping down from an administrative post such as chief judge, judicial-council member, or court-committee chair does not constitute an event rendering unnecessary any further action on a complaint alleging judicial misconduct. *Breyer Committee Report*, 239 F.R.D. at 245. As long as the subject of the complaint performs judicial duties, a complaint alleging judicial misconduct must be addressed. *Id.*

If a complaint is not disposed of pursuant to Rule 11(c), (d), or (e), a special committee must be appointed. Rule 11(f) states that a subject judge must be invited to respond to the complaint before a special committee is appointed, if no earlier response was invited.

Subject judges, of course, receive copies of complaints at the same time that they are referred to the chief judge, and they are free to volunteer responses to them. Under Rule 11(b), the chief judge may request a response if it is thought necessary. However, many complaints are clear candidates for dismissal even if their allegations are accepted as true, and there is no need for the subject judge to devote time to a defense.

The Act requires that the order dismissing a complaint or concluding the proceeding contain a statement of reasons and that a copy of the order be sent to the complainant. 28 U.S.C. § 352(b). Rule 24, dealing with availability of information to the public, contemplates that the order will be made public, usually without disclosing the names of the complainant or the subject judge. If desired for administrative purposes, more identifying information can be included in a non-public version of the order.

When complaints are disposed of by chief judges, the statutory purposes are best served by providing the complainant with a full, particularized, but concise explanation, giving reasons for the conclusions reached. See also Commentary on Rule 24, dealing with public availability.

Rule 11(g) provides that the complainant and subject judge must be notified, in the case of a disposition by the chief judge, of the right to petition the judicial council for review. A copy of a chief judge’s order and memorandum, which may be one document, disposing of a complaint must be sent by the circuit clerk to the Judicial Conference Committee on Judicial Conduct and Disability.

#### 10th Cir. Rule 11

No local rule.

## ARTICLE IV. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

### Rule 12.

#### Composition of Special Committee.

(a) *Membership.* Except as provided in (e), a special committee appointed under Rule 11(f) must consist of the chief judge and equal numbers of circuit and district judges. If the



complaint is about a district judge, bankruptcy judge, or magistrate judge, then, when possible, the district-judge members of the committee must be from districts other than the district of the subject judge. For the courts named in 28 U.S.C. § 363, the committee must be selected from the judges serving on the subject judge's court.

(b) *Presiding Officer.* When appointing the committee, the chief judge may serve as the presiding officer or else must designate a committee member as the presiding officer.

(c) *Bankruptcy Judge or Magistrate Judge as Adviser.* If the subject judge is a bankruptcy judge or magistrate judge, he or she may, within 14 days after being notified of the committee's appointment, ask the chief judge to designate as a committee adviser another bankruptcy judge or magistrate judge, as the case may be. The chief judge must grant such a request but may otherwise use discretion in naming the adviser. Unless the adviser is a Court of Federal Claims special master appointed under 42 U.S.C. § 300aa-12(c), the adviser must be from a district other than the district of the subject bankruptcy judge or subject magistrate judge. The adviser cannot vote but has the other privileges of a committee member.

(d) *Provision of Documents.* The chief judge must certify to each other member of the committee and to any adviser copies of the complaint and statement of facts in whole or relevant part, and any other relevant documents on file.

(e) *Continuing Qualification of Committee Members.* A member of a special committee who was qualified to serve when appointed may continue to serve on the committee even though the member relinquishes the position of chief judge, active circuit judge, or active district judge, as the case may be, but only if the member continues to hold office under Article III, Section 1, of the Constitution of the United States, or under 28 U.S.C. § 171.

(f) *Inability of Committee Member to Complete Service.* If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge must decide whether to appoint a replacement member, either a circuit or district judge as needed under (a). No special committee appointed under these Rules may function with only a single member, and the votes of a two-member committee must be unanimous.

(g) *Voting.* All actions by a committee must be by vote of a majority of all members of the committee.

**Commentary on Rule 12** — This Rule is adapted from the Act and the Illustrative Rules.

Rule 12 leaves the size of a special committee flexible, to be determined on a case-by-case basis. The question of committee size is one that should be weighed with care in view of the potential for consuming the members' time; a large committee should be appointed only if there is a special reason to do so.

Although the Act requires that the chief judge be a member of each special committee, 28 U.S.C. § 353(a)(1), it does not require that the chief judge preside. Accordingly, Rule 12(b) provides that if the chief judge does not preside, he or she must designate another committee member as the presiding officer.

Rule 12(c) provides that the chief judge must appoint a bankruptcy judge or magistrate judge as an adviser to a special committee at the request of a bankruptcy or magistrate subject judge.

Subsection (c) also provides that the adviser will have all the privileges of a committee member except a vote. The adviser, therefore, may participate in all deliberations of the committee, question witnesses at hearings, and write a separate statement to accompany the special committee's report to the judicial council.

Rule 12(e) provides that a member of a special committee who remains an Article III judge may continue to serve on the committee even though the member's status otherwise changes. Thus, a committee that originally consisted of the chief judge and an equal number of circuit and district judges, as required by the law, may continue to function even though changes of status alter that composition. This provision reflects the belief that stability of membership will contribute to the quality of the work of such committees.

Stability of membership is also the principal concern animating Rule 12(f), which deals with the case in which a special committee loses a member before its work is complete.

The Rule permits the chief judge to determine whether a replacement member should be appointed. Generally, appointment of a replacement member is desirable in these situations unless the committee has conducted evidentiary hearings before the vacancy occurs. However, cases may arise in which a committee is in the late stages of its work, and in which it would be difficult for a new member to play a meaningful role. The Rule also preserves the collegial character of the committee process by prohibiting a single surviving member from serving as a committee and by providing that a committee of two surviving members will, in essence, operate under a unanimity rule.

Rule 12(g) provides that actions of a special committee must be by vote of a majority of all the members. All the members of a committee should participate in committee decisions. In that circumstance, it seems reasonable to require that committee decisions be made by a majority of the membership, rather than a majority of some smaller quorum.

**10th Cir. Rule 12**

No local rule.

**Rule 13.  
Conduct of an Investigation.**

(a) *Extent and Methods of Special-Committee Investigation.* Each special committee must determine the appropriate extent and methods of the investigation in light of the allegations of the complaint. If, in the course of the investigation, the committee has cause to believe that the subject judge may have engaged in misconduct or has a disability that is beyond the scope of the complaint, the committee must refer the new matter to the chief judge for action under Rule 5 or Rule 11.

(b) *Criminal Conduct.* If the committee's investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to the extent permitted by the Act to avoid compromising any criminal investigation. The committee has final authority over the timing and extent of its investigation and the formulation of its recommendations.

(c) *Staff.* The committee may arrange for staff assistance to conduct the investigation. It may use existing staff of the judicial branch or may hire special staff through the Director of the Administrative Office of the United States Courts.

(d) *Delegation of Subpoena Power; Contempt.* The chief judge may delegate the authority to exercise the committee's subpoena powers. The judicial council or special committee may institute a contempt proceeding under 28 U.S.C. § 332(d) against anyone who fails to comply with a subpoena.

**Commentary on Rule 13** — This Rule is adapted from the Illustrative Rules.

Rule 13, as well as Rules 14, 15, and 16, are concerned with the way in which a special committee carries out its mission. They reflect the view that a special committee has two roles that are separated in ordinary litigation. First, the committee has an investigative role of the kind that is characteristically left to executive branch agencies or discovery by civil litigants. 28 U.S.C. § 353(c). Second, it has a formalized fact-finding and recommendation-of-disposition role that is characteristically left to juries, judges, or arbitrators. *Id.* Rule 13 generally governs the investigative stage. Even though the same body has responsibility for both roles under the Act, it is important to distinguish between them in order to ensure that appropriate rights are afforded at appropriate times to the subject judge.

One of the difficult questions that can arise is the relationship between proceedings under the Act and criminal investigations. Rule 13(b) assigns responsibility for coordination to the special committee in cases in which criminal conduct is suspected, but gives the committee the authority to determine the appropriate pace of its activity in light of any criminal investigation.

Title 28 U.S.C. § 356(a) provides that a special committee will have full subpoena powers as provided in 28 U.S.C. § 332(d). Section 332(d)(1) provides that subpoenas will be issued on behalf of judicial councils by the circuit clerk "at the direction of the chief judge of the circuit or his designee." Rule 13(d) contemplates that, where the chief judge



designates someone else as presiding officer of a special committee, the presiding officer also be delegated the authority to direct the circuit clerk to issue subpoenas related to committee proceedings. That is not intended to imply, however, that the decision to use the subpoena power is exercisable by the presiding officer alone. See Rule 12(g).

**10th Cir. Rule 13**

No local rule.

**Rule 14.**

**Conduct of Hearings by Special Committee.**

(a) *Purpose of Hearings.* The committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the committee is investigating allegations against more than one judge, it may hold joint or separate hearings.

(b) *Committee Evidence.* Subject to Rule 15, the committee must obtain material, nonredundant evidence in the form it considers appropriate. In the committee's discretion, evidence may be obtained by committee members, staff, or both. Witnesses offering testimonial evidence may include the complainant and the subject judge.

(c) *Counsel for Witnesses.* The subject judge has the right to counsel. The special committee has discretion to decide whether other witnesses may have counsel present when they testify.

(d) *Witness Fees.* Witness fees must be paid as provided in 28 U.S.C. § 1821.

(e) *Oath.* All testimony taken at a hearing must be given under oath or affirmation.

(f) *Rules of Evidence.* The Federal Rules of Evidence do not apply to special-committee hearings.

(g) *Record and Transcript.* A record and transcript must be made of all hearings.

**Commentary on Rule 14** — This Rule is adapted from Section 353 of the Act and the Illustrative Rules.

Rule 14 is concerned with the conduct of fact-finding hearings. Special-committee hearings will normally be held only after the investigative work has been completed and the committee has concluded that there is sufficient evidence to warrant a formal fact-finding proceeding. Special-committee proceedings are primarily inquisitorial rather than adversarial. Accordingly, the Federal Rules of Evidence do not apply to such hearings. Inevitably, a hearing will have something of an adversary character. Nevertheless, that tendency should be moderated to the extent possible. Even though a proceeding will commonly have investigative and hearing stages, committee members should not regard themselves as prosecutors one day and judges the next. Their duty — and that of their staff — is at all times to be impartial seekers of the truth.

Rule 14(b) contemplates that material evidence will be obtained by the committee and presented in the form of affidavits, live testimony, etc. Staff or others who are organizing the hearings should regard it as their role to present evidence representing the entire picture. With respect to testimonial evidence, the subject judge should normally be called as a committee witness. Cases may arise in which the judge will not testify voluntarily. In such cases, subpoena powers are available, subject to the normal testimonial privileges. Although Rule 15(c) recognizes the subject judge's statutory right to call witnesses on his or her own behalf, exercise of this right should not usually be necessary.

**10th Cir. Rule 14**

No local rule.

**Rule 15.**

**Rights of Subject Judge.**

(a) *Notice.*

(1) *Generally.* The subject judge must receive written notice of:



- (A) the appointment of a special committee under Rule 11(f);
- (B) the expansion of the scope of an investigation under Rule 13(a);
- (C) any hearing under Rule 14, including its purposes, the names of any witnesses the committee intends to call, and the text of any statements that have been taken from those witnesses.

(2) *Suggestion of additional witnesses.* The subject judge may suggest additional witnesses to the committee.

(b) *Report of the Special Committee.* The subject judge must be sent a copy of the special committee's report when it is filed with the judicial council.

(c) *Presentation of Evidence.* At any hearing held under Rule 14, the subject judge has the right to present evidence, to compel the attendance of witnesses, and to compel the production of documents. At the request of the subject judge, the chief judge or the judge's designee must direct the circuit clerk to issue a subpoena to a witness under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to cross-examine committee witnesses, in person or by counsel.

(d) *Presentation of Argument.* The subject judge may submit written argument to the special committee and must be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(e) *Attendance at Hearings.* The subject judge has the right to attend any hearing held under Rule 14 and to receive copies of the transcript, of any documents introduced, and of any written arguments submitted by the complainant to the committee.

(f) *Representation by Counsel.* The subject judge may choose to be represented by counsel in the exercise of any right enumerated in this Rule. As provided in Rule 20(e), the United States may bear the costs of the representation.

**Commentary on Rule 15** — This Rule is adapted from the Act and the Illustrative Rules.

The Act states that these Rules must contain provisions requiring that "the judge whose conduct is the subject of a complaint . . . be afforded an opportunity to appear (in person or by counsel) at proceedings conducted by the investigating panel, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing." 28 U.S.C. § 358(b)(2). To implement this provision, Rule 15(e) gives the judge the right to attend any hearing held for the purpose of receiving evidence of record or hearing argument under Rule 14.

The Act does not require that the subject judge be permitted to attend all proceedings of the special committee. Accordingly, the Rules do not give a right to attend other proceedings — for example, meetings at which the committee is engaged in investigative activity, such as interviewing persons to learn whether they ought to be called as witnesses or examining for relevance purposes documents delivered pursuant to a subpoena duces tecum, or meetings in which the committee is deliberating on the evidence or its recommendations.

#### 10th Cir. Rule 15

No local rule.

### **Rule 16.**

#### **Rights of Complainant in Investigation.**

(a) *Notice.* The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the judicial council is filed, the complainant must be notified of the filing. The judicial council may, in its discretion, provide a copy of the report of a special committee to the complainant.

(b) *Opportunity to Provide Evidence.* If the committee determines that the complainant may have evidence that does not already exist in writing, a representative of the committee must interview the complainant.

(c) *Presentation of Argument.* The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.

(d) *Representation by Counsel.* A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

(e) *Cooperation.* In exercising its discretion under this Rule, a special committee may take into account the degree of the complainant's cooperation in preserving the confidentiality of the proceedings, including the identity of the subject judge.

**Commentary on Rule 16** — This Rule is adapted from the Act and the Illustrative Rules.

In accordance with the view of the process as fundamentally administrative and inquisitorial, these Rules do not give the complainant the rights of a party to litigation, and leave the complainant's role largely to the discretion of the special committee. However, Rule 16(b) provides that, where a special committee has been appointed and it determines that the complainant may have additional evidence, the complainant must be interviewed by a representative of the committee. Such an interview may be in person or by telephone, and the representative of the committee may be either a member or staff.

Rule 16 does not contemplate that the complainant will ordinarily be permitted to attend proceedings of the special committee except when testifying or presenting oral argument. A special committee may exercise its discretion to permit the complainant to be present at its proceedings, or to permit the complainant, individually or through counsel, to participate in the examination or cross-examination of witnesses.

The Act authorizes an exception to the normal confidentiality provisions where the judicial council in its discretion provides a copy of the report of the special committee to the complainant and to the subject judge. 28 U.S.C. § 360(a)(1). However, the Rules do not entitle the complainant to a copy of the special committee's report.

In exercising their discretion regarding the role of the complainant, the special committee and the judicial council should protect the confidentiality of the complaint process. As a consequence, subsection (e) provides that a special committee may consider the degree to which a complainant has cooperated in preserving the confidentiality of the proceedings in determining what role beyond the minimum required by these Rules should be given to that complainant.

#### 10th Cir. Rule 16

No local rule.

### **Rule 17. Special-Committee Report.**

The committee must file with the judicial council a comprehensive report of its investigation, including findings and recommendations for council action. The report must be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of committee members, and the record of any hearings held under Rule 14. A copy of the report and accompanying statement must be sent to the Judicial Conference Committee on Judicial Conduct and Disability.

#### **COMMENT**

**Commentary on Rule 17** — This Rule is adapted from the Illustrative Rules and is self-explanatory. The provision for sending a copy of the special-committee report and accompanying statement to the Judicial Conference Committee is new.

#### 10th Cir. Rule 17

No local rule.



## ARTICLE V. JUDICIAL-COUNCIL REVIEW

### Rule 18.

#### **Petitions for Review of Chief Judge Dispositions Under Rule 11(c), (d), or (e).**

(a) *Petitions for Review.* After the chief judge issues an order under Rule 11(c), (d), or (e), a complainant or subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.

(b) *When to File; Form; Where to File.* A petition for review must be filed in the office of the circuit clerk within 35 days of the date on the clerk's letter informing the parties of the chief judge's order. The petition should be in letter form, addressed to the circuit clerk, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "I hereby petition the judicial council for review of . . ." and state the reasons why the petition should be granted. It must be signed.

(c) *Receipt and Distribution of Petition.* A circuit clerk who receives a petition for review filed within the time allowed and in proper form must:

(1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;

(2) promptly distribute to each member of the judicial council, or its relevant panel, except for any member disqualified under Rule 25, or make available in the manner provided by local rule, the following materials:

(A) copies of the complaint;

(B) all materials obtained by the chief judge in connection with the inquiry;

(C) the chief judge's order disposing of the complaint;

(D) any memorandum in support of the chief judge's order;

(E) the petition for review; and

(F) an appropriate ballot;

(3) send the petition for review to the Judicial Conference Committee on Judicial Conduct and Disability. Unless the Judicial Conference Committee requests them, the clerk will not send copies of the materials obtained by the chief judge.

(d) *Untimely Petition.* The clerk must refuse to accept a petition that is received after the deadline in (b).

(e) *Timely Petition Not in Proper Form.* When the clerk receives a petition filed within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council — such as a document that is ambiguous about whether it is intended to be a petition for review — the clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within 21 days of the date of the clerk's letter about the deficiencies or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the clerk must reject the petition.

#### **Commentary on Rule 18** — Rule 18 is adapted largely from the Illustrative Rules.

Subsection (a) permits a subject judge, as well as the complainant, to petition for review of a chief judge's order dismissing a complaint under Rule 11(c), or concluding that appropriate corrective action or intervening events have remedied or mooted the problems raised by the complaint pursuant to Rule 11(d) or (e). Although the subject judge may ostensibly be vindicated by the dismissal or conclusion of a complaint, a chief judge's order may include language disagreeable to the subject judge. For example, an order may dismiss a complaint, but state that the subject judge did in fact engage in misconduct. Accordingly, a subject judge may wish to object to the content of the order and is given the opportunity to petition the judicial council of the circuit for review.



Subsection (b) contains a time limit of thirty-five days to file a petition for review. It is important to establish a time limit on petitions for review of chief judges' dispositions in order to provide finality to the process. If the complaint requires an investigation, the investigation should proceed; if it does not, the subject judge should know that the matter is closed.

The standards for timely filing under the Federal Rules of Appellate Procedure should be applied to petitions for review. See Fed. R. App. P. 25(a)(2)(A) and (C).

Rule 18(e) provides for an automatic extension of the time limit imposed under subsection (b) if a person files a petition that is rejected for failure to comply with formal requirements.

### 10th Cir. Rule 18

No local rule.

## **Rule 19.**

### **Judicial-Council Disposition of Petitions for Review.**

(a) *Rights of Subject Judge.* At any time after a complainant files a petition for review, the subject judge may file a written response with the circuit clerk. The clerk must promptly distribute copies of the response to each member of the judicial council or of the relevant panel, unless that member is disqualified under Rule 25. Copies must also be distributed to the chief judge, to the complainant, and to the Judicial Conference Committee on Judicial Conduct and Disability. The subject judge must not otherwise communicate with individual council members about the matter. The subject judge must be given copies of any communications to the judicial council from the complainant.

(b) *Judicial-Council Action.* After considering a petition for review and the materials before it, a judicial council may:

- (1) affirm the chief judge's disposition by denying the petition;
- (2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;
- (3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or
- (4) in exceptional circumstances, take other appropriate action.

(c) *Notice of Council Decision.* Copies of the judicial council's order, together with any accompanying memorandum in support of the order or separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability.

(d) *Memorandum of Council Decision.* If the council's order affirms the chief judge's disposition, a supporting memorandum must be prepared only if the judicial council concludes that there is a need to supplement the chief judge's explanation. A memorandum supporting a council order must not include the name of the complainant or the subject judge.

(e) *Review of Judicial-Council Decision.* If the judicial council's decision is adverse to the petitioner, and if no member of the council dissented on the ground that a special committee should be appointed under Rule 11(f), the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b) solely on the issue of whether a special committee should be appointed.

(f) *Public Availability of Judicial-Council Decision.* Materials related to the council's decision must be made public to the extent, at the time, and in the manner set forth in Rule 24.

**Commentary on Rule 19** — This Rule is largely adapted from the Act and is self-explanatory.

The council should ordinarily review the decision of the chief judge on the merits, treating the petition for review for all practical purposes as an appeal. The judicial council

may respond to a petition by affirming the chief judge's order, remanding the matter, or, in exceptional cases, taking other appropriate action.

**10th Cir. Rule 19**

No local rule.

**Rule 20.**

**Judicial-Council Consideration of Reports and Recommendations of Special Committees.**

(a) *Rights of Subject Judge.* Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the judicial council. The judge must also be given an opportunity to present argument through counsel, written or oral, as determined by the council. The judge must not otherwise communicate with council members about the matter.

(b) *Judicial-Council Action.*

(1) *Discretionary actions.* Subject to the judge's rights set forth in subsection (a), the judicial council may:

(A) dismiss the complaint because:

(i) even if the claim is true, the claimed conduct is not conduct prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(ii) the complaint is directly related to the merits of a decision or procedural ruling;

(iii) the facts on which the complaint is based have not been established;

or

(iv) the complaint is otherwise not appropriate for consideration under 28 U.S.C. §§ 351-364.

(B) conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.

(C) refer the complaint to the Judicial Conference of the United States with the council's recommendations for action.

(D) take remedial action to ensure the effective and expeditious administration of the business of the courts, including:

(i) censuring or reprimanding the subject judge, either by private communication or by public announcement;

(ii) ordering that no new cases be assigned to the subject judge for a limited, fixed period;

(iii) in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings under 28 U.S.C. § 631(i) or 42 U.S.C. § 300aa-12(c)(2);

(iv) in the case of a bankruptcy judge, removing the judge from office under 28 U.S.C. § 152(e);

(v) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length-of-service requirements will be waived; and

(vi) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed.

(E) take any combination of actions described in (b)(1)(A)-(D) of this Rule that is within its power.

(2) *Mandatory actions.* A judicial council must refer a complaint to the Judicial Conference if the council determines that a circuit judge or district judge may have engaged in conduct that:



- (A) might constitute ground for impeachment; or
- (B) in the interest of justice, is not amenable to resolution by the judicial council.

(c) *Inadequate Basis for Decision.* If the judicial council finds that a special committee's report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the committee for further investigation and a new report, or it may conduct further investigation. If the judicial council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The judicial council's conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.

(d) *Council Vote.* Council action must be taken by a majority of those members of the council who are not disqualified. A decision to remove a bankruptcy judge from office requires a majority vote of all the members of the council.

(e) *Recommendation for Fee Reimbursement.* If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the judicial council may recommend that the Director of the Administrative Office of the United States Courts use funds appropriated to the Judiciary to reimburse the judge for reasonable expenses incurred during the investigation, when those expenses would not have been incurred but for the requirements of the Act and these Rules. Reasonable expenses include attorneys' fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).

(f) *Council Action.* Council action must be by written order. Unless the council finds that extraordinary reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. The order and the supporting memorandum must be provided to the complainant, the subject judge, and the Judicial Conference Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the judicial council's decision as provided in Rule 21(b).

**Commentary on Rule 20** — This Rule is largely adapted from the Illustrative Rules.

Rule 20(a) provides that within twenty-one days after the filing of the report of a special committee, the subject judge may address a written response to all of the members of the judicial council. The subject judge must also be given an opportunity to present oral argument to the council, personally or through counsel. The subject judge may not otherwise communicate with council members about the matter.

Rule 20(c) provides that if the judicial council decides to conduct an additional investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The conduct of the investigation will be generally in accordance with the procedures set forth in Rules 13 through 16 for the conduct of an investigation by a special committee. However, if hearings are held, the council may limit testimony or the presentation of evidence to avoid unnecessary repetition of testimony and evidence before the special committee.

Rule 20(d) provides that council action must be taken by a majority of those members of the council who are not disqualified, except that a decision to remove a bankruptcy judge from office requires a majority of all the members of the council as required by 28 U.S.C. § 152(e). However, it is inappropriate to apply a similar rule to the less severe actions that a judicial council may take under the Act. If some members of the council are disqualified in the matter, their disqualification should not be given the effect of a vote against council action.

With regard to Rule 20(e), the judicial council, on the request of the subject judge, may recommend to the Director of the Administrative Office of the United States Courts that the subject judge be reimbursed for reasonable expenses, including attorneys' fees, incurred. The judicial council has the authority to recommend such reimbursement where, after investigation by a special committee, the complaint has been finally dismissed or con-



cluded under subsection (b)(1)(A) or (B) of this Rule. It is contemplated that such reimbursement may be provided for the successful prosecution or defense of a proceeding under Rule 21(a) or (b), in other words, one that results in a Rule 20(b)(1)(A) or (B) dismissal or conclusion.

Rule 20(f) requires that council action normally be supported with a memorandum of factual determinations and reasons and that notice of the action be given to the complainant and the subject judge. Rule 20(f) also requires that the notification to the complainant and the subject judge include notice of any right to petition for review of the council's decision under Rule 21(b).

### 10th Cir. Rule 20

#### **Rule 20.1. Tenth Circuit Misconduct Rule 20.1 — Consolidated Order and Memorandum.**

National Rule 11(g)(2) specifically provides that a chief judge must prepare a written order and memorandum when disposing a case under that rule. The rule notes that the order and memorandum may be one document. National Rule 20 also requires a written order and memorandum — by the Judicial Council, but contains no notation about whether these documents may be joined. This circuit will ordinarily consolidate the written order and memorandum required by Rule 20 into one document.

## **ARTICLE VI. REVIEW BY JUDICIAL CONFERENCE COMMITTEE ON CONDUCT AND DISABILITY**

### **Rule 21.**

#### **Committee on Judicial Conduct and Disability.**

(a) *Review by Committee.* The Committee on Judicial Conduct and Disability, consisting of seven members, considers and disposes of all petitions for review under (b) of this Rule, in conformity with the Committee's jurisdictional statement. Its disposition of petitions for review is ordinarily final. The Judicial Conference of the United States may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review.

(b) *Reviewable Matters.*

(1) *Upon petition.* A complainant or subject judge may petition the Committee for review of a judicial-council order entered in accordance with:

(A) Rule 20(b)(1)(A), (B), (D), or (E); or

(B) Rule 19(b)(1) or (4) if one or more members of the judicial council dissented from the order on the ground that a special committee should be appointed under Rule 11(f); in that event, the Committee's review will be limited to the issue of whether a special committee should be appointed.

(2) *Upon Committee's initiative.* At its initiative and in its sole discretion, the Committee may review any judicial-council order entered under Rule 19(b)(1) or (4), but only to determine whether a special committee should be appointed. Before undertaking the review, the Committee must invite that judicial council to explain why it believes the appointment of a special committee is unnecessary, unless the reasons are clearly stated in the judicial council's order denying the petition for review. If the Committee believes that it would benefit from a submission by the subject judge, it may issue an appropriate request. If the Committee determines that a special committee should be appointed, the Committee must issue a written decision giving its reasons.

(c) *Committee Vote.* Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review. Committee decisions under (b) of this Rule must be by majority vote of the qualified Committee members. If only six members are qualified to vote on a petition for review, the decision must be made by a majority of a panel of five members drawn from a randomly selected

list that rotates after each decision by a panel drawn from the list. The members who will determine the petition must be selected based on committee membership as of the date on which the petition is received. Those members selected to hear the petition should serve in that capacity until final disposition of the petition, whether or not their term of committee membership has ended. If only four members are qualified to vote, the Chief Justice must appoint, if available, an ex-member of the Committee or, if not, another United States judge to consider the petition.

(d) *Additional Investigation.* Except in extraordinary circumstances, the Committee will not conduct an additional investigation. The Committee may return the matter to the judicial council with directions to undertake an additional investigation. If the Committee conducts an additional investigation, it will exercise the powers of the Judicial Conference under 28 U.S.C. § 331.

(e) *Oral Argument; Personal Appearance.* There is ordinarily no oral argument or personal appearance before the Committee. In its discretion, the Committee may permit written submissions from the complainant or subject judge.

(f) *Committee Decisions.* Committee decisions under this Rule must be transmitted promptly to the Judicial Conference of the United States. Other distribution will be by the Administrative Office at the direction of the Committee chair.

(g) *Finality.* All orders of the Judicial Conference or of the Committee (when the Conference does not exercise its power of review) are final.

**Commentary on Rule 21** — This Rule is largely self-explanatory.

Rule 21(a) is intended to clarify that the delegation of power to the Judicial Conference Committee on Judicial Conduct and Disability to dispose of petitions does not preclude review of such dispositions by the Conference. However, there is no right to such review in any party.

Rules 21(b)(1)(B) and (b)(2) are intended to fill a jurisdictional gap as to review of dismissals or conclusions of complaints under Rule 19(b)(1) or (4). Where one or more members of a judicial council reviewing a petition have dissented on the ground that a special committee should have been appointed, the complainant or subject judge has the right to petition for review by the Committee but only as to that issue. Under Rule 21(b)(2), the Judicial Conference Committee on Judicial Conduct and Disability may review such a dismissal or conclusion in its sole discretion, whether or not such a dissent occurred, and only as to the appointment of a special committee. No party has a right to such review, and such review will be rare.

Rule 21(c) provides for review only by Committee members from circuits other than that of the subject judge. To avoid tie votes, the Committee will decide petitions for review by rotating panels of five when only six members are qualified. If only four members are qualified, the Chief Justice must appoint an additional judge to consider that petition for review.

Under this Rule, all Committee decisions are final in that they are unreviewable unless the Judicial Conference, in its discretion, decides to review a decision. Committee decisions, however, do not necessarily constitute final action on a complaint for purposes of Rule 24.

### 10th Cir. Rule 21

No local rule.

## **Rule 22. Procedures for Review.**

(a) *Filing a Petition for Review.* A petition for review of a judicial-council decision may be filed by sending a brief written statement to the Judicial Conference Committee on Judicial Conduct and Disability, addressed to:

Judicial Conference Committee on Judicial Conduct and Disability  
Attn: Office of General Counsel



Administrative Office of the United States Courts  
One Columbus Circle, NE  
Washington, D.C. 20544

The Administrative Office will send a copy of the petition to the complainant or subject judge, as the case may be.

(b) *Form and Contents of Petition for Review.* No particular form is required. The petition must contain a short statement of the basic facts underlying the complaint, the history of its consideration before the appropriate judicial council, a copy of the judicial council's decision, and the grounds on which the petitioner seeks review. The petition for review must specify the date and docket number of the judicial-council order for which review is sought. The petitioner may attach any documents or correspondence arising in the course of the proceeding before the judicial council or its special committee. A petition should not normally exceed 20 pages plus necessary attachments.

(c) *Time.* A petition must be submitted within 63 days of the date of the order for which review is sought.

(d) *Copies.* Seven copies of the petition for review must be submitted, at least one of which must be signed by the petitioner or his or her attorney. If the petitioner submits a signed declaration of inability to pay the expense of duplicating the petition, the Administrative Office must accept the original petition and must reproduce copies at its expense.

(e) *Action on Receipt of Petition for Review.* The Administrative Office must acknowledge receipt of a petition for review submitted under this Rule, notify the chair of the Judicial Conference Committee on Judicial Conduct and Disability, and distribute the petition to the members of the Committee for their deliberation.

**Commentary on Rule 22** — Rule 22 is self-explanatory.

**10th Cir. Rule 22**

No local rule.

## ARTICLE VII. MISCELLANEOUS RULES

### Rule 23. Confidentiality.

(a) *General Rule.* The consideration of a complaint by the chief judge, a special committee, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability is confidential. Information about this consideration must not be disclosed by any judge or employee of the judicial branch or by any person who records or transcribes testimony except as allowed by these Rules. In extraordinary circumstances, a chief judge may disclose the existence of a proceeding under these Rules when necessary to maintain public confidence in the federal judiciary's ability to redress misconduct or disability.

(b) *Files.* All files related to complaints must be separately maintained with appropriate security precautions to ensure confidentiality.

(c) *Disclosure in Decisions.* Except as otherwise provided in Rule 24, written decisions of the chief judge, the judicial council, or the Judicial Conference Committee on Judicial Conduct and Disability, and dissenting opinions or separate statements of members of the council or Committee may contain information and exhibits that the authors consider appropriate for inclusion, and the information and exhibits may be made public.

(d) *Availability to Judicial Conference.* On request of the Judicial Conference or its Committee on Judicial Conduct and Disability, the circuit clerk must furnish any requested records related to a complaint. For auditing purposes, the circuit clerk must provide access to the Committee to records of proceedings under the Act at the site where the records are kept.



(e) *Availability to District Court.* If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 20(b)(1)(D)(iii), the circuit clerk must provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the judicial council at the time of its decision. On request of the chief judge of the district court, the judicial council may authorize release to that chief judge of any other records relating to the investigation.

(f) *Impeachment Proceedings.* If the Judicial Conference determines that consideration of impeachment may be warranted, it must transmit the record of all relevant proceedings to the Speaker of the House of Representatives.

(g) *Subject Judge's Consent.* If both the subject judge and the chief judge consent in writing, any materials from the files may be disclosed to any person. In any such disclosure, the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted by a chief judge, a special committee, or the judicial council, not be revealed.

(h) *Disclosure in Special Circumstances.* The Judicial Conference, its Committee on Judicial Conduct and Disability, or a judicial council may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that disclosure is justified by special circumstances and is not prohibited by the Act. Disclosure may be made to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline, but only where the study or evaluation has been specifically approved by the Judicial Conference or by the Judicial Conference Committee on Judicial Conduct and Disability. Appropriate steps must be taken to protect the identities of the subject judge, the complainant, and witnesses from public disclosure. Other appropriate safeguards to protect against the dissemination of confidential information may be imposed.

(i) *Disclosure of Identity by Subject Judge.* Nothing in this Rule precludes the subject judge from acknowledging that he or she is the judge referred to in documents made public under Rule 24.

(j) *Assistance and Consultation.* Nothing in this Rule precludes the chief judge or judicial council acting on a complaint filed under the Act from seeking the help of qualified staff or from consulting other judges who may be helpful in the disposition of the complaint.

**Commentary on Rule 23** — Rule 23 was adapted from the Illustrative Rules.

The Act applies a rule of confidentiality to “papers, documents, and records of proceedings related to investigations conducted under this chapter” and states that they may not be disclosed “by any person in any proceeding,” with enumerated exceptions. 28 U.S.C. § 360(a). Three questions arise: Who is bound by the confidentiality rule, what proceedings are subject to the rule, and who is within the circle of people who may have access to information without breaching the rule?

With regard to the first question, Rule 23(a) provides that judges, employees of the judicial branch, and those persons involved in recording proceedings and preparing transcripts are obliged to respect the confidentiality requirement. This of course includes subject judges who do not consent to identification under Rule 23(i).

With regard to the second question, Rule 23(a) applies the rule of confidentiality broadly to consideration of a complaint at any stage.

With regard to the third question, there is no barrier of confidentiality among a chief judge, judicial council, the Judicial Conference, and the Judicial Conference Committee on Judicial Conduct and Disability. Each may have access to any of the confidential records for use in their consideration of a referred matter, a petition for review, or monitoring the administration of the Act. A district court may have similar access if the judicial council orders the district court to initiate proceedings to remove a magistrate judge from office, and Rule 23(e) so provides.

In extraordinary circumstances, a chief judge may disclose the existence of a proceeding under these Rules. The disclosure of such information in high-visibility or controversial cases is to reassure the public that the federal judiciary is capable of redressing judicial

misconduct or disability. Moreover, the confidentiality requirement does not prevent the chief judge from “communicat[ing] orally or in writing with . . . [persons] who may have knowledge of the matter,” as part of a limited inquiry conducted by the chief judge under Rule 11(b).

Rule 23 recognizes that there must be some exceptions to the Act’s confidentiality requirement. For example, the Act requires that certain orders and the reasons for them must be made public. 28 U.S.C. § 360(b). Rule 23(c) makes it explicit that memoranda supporting chief judge and council orders, as well as dissenting opinions and separate statements, may contain references to information that would otherwise be confidential and that such information may be made public. However, subsection (c) is subject to Rule 24(a) which provides the general rule regarding the public availability of decisions. For example, the name of a subject judge cannot be made public in a decision if disclosure of the name is prohibited by that Rule.

The Act makes clear that there is a barrier of confidentiality between the judicial branch and the legislative. It provides that material may be disclosed to Congress only if it is believed necessary to an impeachment investigation or trial of a judge. 28 U.S.C. § 360(a)(2). Accordingly, Section 355(b) of the Act requires the Judicial Conference to transmit the record of the proceeding to the House of Representatives if the Conference believes that impeachment of a subject judge may be appropriate. Rule 23(f) implements this requirement.

The Act provides that confidential materials may be disclosed if authorized in writing by the subject judge and by the chief judge. 28 U.S.C. § 360(a)(3). Rule 23(g) implements this requirement. Once the subject judge has consented to the disclosure of confidential materials related to a complaint, the chief judge ordinarily will refuse consent only to the extent necessary to protect the confidentiality interests of the complainant or of witnesses who have testified in investigatory proceedings or who have provided information in response to a limited inquiry undertaken pursuant to Rule 11. It will generally be necessary, therefore, for the chief judge to require that the identities of the complainant or of such witnesses, as well as any identifying information, be shielded in any materials disclosed, except insofar as the chief judge has secured the consent of the complainant or of a particular witness to disclosure, or there is a demonstrated need for disclosure of the information that, in the judgment of the chief judge, outweighs the confidentiality interest of the complainant or of a particular witness (as may be the case where the complainant is delusional or where the complainant or a particular witness has already demonstrated a lack of concern about maintaining the confidentiality of the proceedings).

Rule 23(h) permits disclosure of additional information in circumstances not enumerated. For example, disclosure may be appropriate to permit a prosecution for perjury based on testimony given before a special committee. Another example might involve evidence of criminal conduct by a judge discovered by a special committee.

Subsection (h) also permits the authorization of disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline. The Rule envisions disclosure of information from the official record of complaint proceedings to a limited category of persons for appropriately authorized research purposes only, and with appropriate safeguards to protect individual identities in any published research results that ensue. In authorizing disclosure, the judicial council may refuse to release particular materials when such release would be contrary to the interests of justice, or that constitute purely internal communications. The Rule does not envision disclosure of purely internal communications between judges and their colleagues and staff.

Under Rule 23(j), chief judges and judicial councils may seek staff assistance or consult with other judges who may be helpful in the process of complaint disposition; the confidentiality requirement does not preclude this. The chief judge, for example, may properly seek the advice and assistance of another judge who the chief judge deems to be in the best position to communicate with the subject judge in an attempt to bring about corrective action. As another example, a new chief judge may wish to confer with a predecessor to learn how similar complaints have been handled. In consulting with other



judges, of course, the chief judge should disclose information regarding the complaint only to the extent the chief judge deems necessary under the circumstances.

**10th Cir. Rule 23**

No local rule.

**Rule 24.**

**Public Availability of Decisions.**

(a) *General Rule; Specific Cases.* When final action has been taken on a complaint and it is no longer subject to review, all orders entered by the chief judge and judicial council, including any supporting memoranda and any dissenting opinions or separate statements by members of the judicial council, must be made public, with the following exceptions:

(1) if the complaint is finally dismissed under Rule 11(c) without the appointment of a special committee, or if it is concluded under Rule 11(d) because of voluntary corrective action, the publicly available materials must not disclose the name of the subject judge without his or her consent.

(2) if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the judicial council must determine whether the name of the subject judge should be disclosed.

(3) if the complaint is finally disposed of by a privately communicated censure or reprimand, the publicly available materials must not disclose either the name of the subject judge or the text of the reprimand.

(4) if the complaint is finally disposed of under Rule 20(b)(1)(D) by any action other than private censure or reprimand, the text of the dispositive order must be included in the materials made public, and the name of the subject judge must be disclosed.

(5) the name of the complainant must not be disclosed in materials made public under this Rule unless the chief judge orders disclosure.

(b) *Manner of Making Public.* The orders described in (a) must be made public by placing them in a publicly accessible file in the office of the circuit clerk or by placing the orders on the court's public website. If the orders appear to have precedential value, the chief judge may cause them to be published. In addition, the Judicial Conference Committee on Judicial Conduct and Disability will make available on the Federal Judiciary's website, [www.uscourts.gov](http://www.uscourts.gov), selected illustrative orders described in paragraph (a), appropriately redacted, to provide additional information to the public on how complaints are addressed under the Act.

(c) *Orders of Judicial Conference Committee.* Orders of this Committee constituting final action in a complaint proceeding arising from a particular circuit will be made available to the public in the office of the clerk of the relevant court of appeals. The Committee will also make such orders available on the Federal Judiciary's website, [www.uscourts.gov](http://www.uscourts.gov). When authorized by the Committee, other orders related to complaint proceedings will similarly be made available.

(d) *Complaints Referred to the Judicial Conference of the United States.* If a complaint is referred to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials relating to the complaint will be made public only if ordered by the Judicial Conference.

**Commentary on Rule 24** — Rule 24 is adapted from the Illustrative Rules and the recommendations of the Breyer Committee.

The Act requires the circuits to make available only written orders of a judicial council or the Judicial Conference imposing some form of sanction. 28 U.S.C. § 360(b). The Judicial Conference, however, has long recognized the desirability of public availability of a broader range of orders and other materials. In 1994, the Judicial Conference "urge[d] all circuits and courts covered by the Act to submit to the West Publishing Company, for publication in Federal Reporter 3d, and to Lexis all orders issued pursuant to [the Act] that are deemed by the issuing circuit or court to have significant precedential value to other circuits and courts covered by the Act." Report of the Proceedings of the Judicial



Conference of the United States, Mar. 1994, at 28. Following this recommendation, the 2000 revision of the Illustrative Rules contained a public availability provision very similar to Rule 24. In 2002, the Judicial conference again voted to encourage the circuits “to submit non-routine public orders disposing of complaints of judicial misconduct or disability for publication by on-line and print services.” Report of the Proceedings of the Judicial Conference of the United States, Sept. 2002, at 58. The *Breyer* Committee Report further emphasized that “[p]osting such orders on the judicial branch’s public website would not only benefit judges directly, it would also encourage scholarly commentary and analysis of the orders.” *Breyer* Committee Report, 239 F.R.D. at 216. With these considerations in mind, Rule 24 provides for public availability of a wide range of materials.

Rule 24 provides for public availability of orders of the chief judge, the judicial council, and the Judicial Conference Committee on Judicial Conduct and Disability and the texts of any memoranda supporting their orders, together with any dissenting opinions or separate statements by members of the judicial council. However, these orders and memoranda are to be made public only when final action on the complaint has been taken and any right of review has been exhausted. The provision that decisions will be made public only after final action has been taken is designed in part to avoid public disclosure of the existence of pending proceedings. Whether the name of the subject judge is disclosed will then depend on the nature of the final action. If the final action is an order predicated on a finding of misconduct or disability (other than a privately communicated censure or reprimand) the name of the judge must be made public. If the final action is dismissal of the complaint, the name of the subject judge must not be disclosed. Rule 24(a)(1) provides that where a proceeding is concluded under Rule 11(d) by the chief judge on the basis of voluntary corrective action, the name of the subject judge must not be disclosed. Shielding the name of the subject judge in this circumstance should encourage informal disposition.

If a complaint is dismissed as moot, or because intervening events have made action on the complaint unnecessary, after appointment of a special committee, Rule 24(a)(2) allows the judicial council to determine whether the subject judge will be identified. In such a case, no final decision has been rendered on the merits, but it may be in the public interest — particularly if a judicial officer resigns in the course of an investigation — to make the identity of the judge known.

Once a special committee has been appointed, and a proceeding is concluded by the full council on the basis of a remedial order of the council, Rule 24(a)(4) provides for disclosure of the name of the subject judge.

Finally, Rule 24(a)(5) provides that the identity of the complainant will be disclosed only if the chief judge so orders. Identifying the complainant when the subject judge is not identified would increase the likelihood that the identity of the subject judge would become publicly known, thus circumventing the policy of nondisclosure. It may not always be practicable to shield the complainant’s identity while making public disclosure of the judicial council’s order and supporting memoranda; in some circumstances, moreover, the complainant may consent to public identification.

### **10th Cir. Rule 24**

#### **Rule 24.1. Tenth Circuit Misconduct Rule 24.1 — Public Posting of Orders.**

National Rule 24(a) requires that all orders entered by the chief judge and the judicial council, with certain listed exceptions, “must be made public.” It is the policy of this circuit, and permitted by National Rule 24(b), to make such orders public by posting them on the circuit court’s external website. The website address is [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov); the qualifying orders are posted under “Judicial Misconduct.”

### **Rule 25.**

#### **Disqualification.**

(a) *General Rule.* Any judge is disqualified from participating in any proceeding under these Rules if the judge, in his or her discretion, concludes that circumstances warrant

disqualification. If the complaint is filed by a judge, that judge is disqualified from participating in any consideration of the complaint except to the extent that these Rules provide for a complainant's participation. A chief judge who has identified a complaint under Rule 5 is not automatically disqualified from considering the complaint.

(b) *Subject Judge*. A subject judge is disqualified from considering the complaint except to the extent that these Rules provide for participation by a subject judge.

(c) *Chief Judge Not Disqualified from Considering a Petition for Review of a Chief Judge's Order*. If a petition for review of a chief judge's order entered under Rule 11(c), (d), or (e) is filed with the judicial council in accordance with Rule 18, the chief judge is not disqualified from participating in the council's consideration of the petition.

(d) *Member of Special Committee Not Disqualified*. A member of the judicial council who serves on a special committee, including the chief judge, is not disqualified from participating in council consideration of the committee's report.

(e) *Subject Judge's Disqualification After Appointment of a Special Committee*. Upon appointment of a special committee, the subject judge is automatically disqualified from participating in any proceeding arising under the Act or these Rules as a member of any special committee, the judicial council of the circuit, the Judicial Conference of the United States, and the Judicial Conference Committee on Judicial Conduct and Disability. The disqualification continues until all proceedings on the complaint against the subject judge are finally terminated with no further right of review.

(f) *Substitute for Disqualified Chief Judge*. If the chief judge is disqualified from participating in consideration of the complaint, the duties and responsibilities of the chief judge under these Rules must be assigned to the most-senior active circuit judge not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to request a transfer under Rule 26, or, in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who are named in the complaint may participate in this determination if necessary to obtain a quorum of the judicial council.

(g) *Judicial-Council Action When Multiple Judges Are Disqualified*. Notwithstanding any other provision in these Rules to the contrary,

(1) a member of the judicial council who is a subject judge may participate in its disposition if:

(A) participation by one or more subject judges is necessary to obtain a quorum of the judicial council;

(B) the judicial council finds that the lack of a quorum is due to the naming of one or more judges in the complaint for the purpose of disqualifying that judge or judges, or to the naming of one or more judges based on their participation in a decision excluded from the definition of misconduct under Rule 3(h)(3); and

(C) the judicial council votes that it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges be eligible to act.

(2) otherwise disqualified members may participate in votes taken under (g)(1)(B) and (g)(1)(C).

(h) *Disqualification of Members of the Judicial Conference Committee*. No member of the Judicial Conference Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules because of consultations with a chief judge, a member of a special committee, or a member of a judicial council about the interpretation or application of the Act or these Rules, unless the member believes that the consultation would prevent fair-minded participation.

**Commentary on Rule 25** — Rule 25 is adapted from the Illustrative Rules.

Subsection (a) provides the general rule for disqualification. Of course, a judge is not disqualified simply because the subject judge is on the same court. However, this subsection recognizes that there may be cases in which an appearance of bias or prejudice is created by circumstances other than an association with the subject judge as a colleague. For example, a judge may have a familial relationship with a complainant or subject judge.



When such circumstances exist, a judge may, in his or her discretion, conclude that disqualification is warranted.

Subsection (e) makes it clear that the disqualification of the subject judge relates only to the subject judge's participation in any proceeding arising under the Act or these Rules as a member of a special committee, judicial council, Judicial Conference, or the Judicial Conference Committee. The Illustrative Rule, based on Section 359(a) of the Act, is ambiguous and could be read to disqualify a subject judge from service of any kind on each of the bodies mentioned. This is undoubtedly not the intent of the Act; such a disqualification would be anomalous in light of the Act's allowing a subject judge to continue to decide cases and to continue to exercise the powers of chief circuit or district judge. It would also create a substantial deterrence to the appointment of special committees, particularly where a special committee is needed solely because the chief judge may not decide matters of credibility in his or her review under Rule 11.

While a subject judge is barred by Rule 25(b) from participating in the disposition of the complaint in which he or she is named, Rule 25(e) recognizes that participation in proceedings arising under the Act or these Rules by a judge who is the subject of a special committee investigation may lead to an appearance of self-interest in creating substantive and procedural precedents governing such proceedings; Rule 25(e) bars such participation.

Under the Act, a complaint against the chief judge is to be handled by "that circuit judge in regular active service next senior in date of commission." 28 U.S.C. § 351(c). Rule 25(f) provides that seniority among judges other than the chief judge is to be determined by date of commission, with the result that complaints against the chief judge may be routed to a former chief judge or other judge who was appointed earlier than the chief judge. The Rules do not purport to prescribe who is to preside over meetings of the judicial council. Consequently, where the presiding member of the judicial council is disqualified from participating under these Rules, the order of precedence prescribed by Rule 25(f) for performing "the duties and responsibilities of the chief circuit judge under these Rules" does not apply to determine the acting presiding member of the judicial council. That is a matter left to the internal rules or operating practices of each judicial council. In most cases the most senior active circuit judge who is a member of the judicial council and who is not disqualified will preside.

Sometimes a single complaint is filed against a large group of judges. If the normal disqualification rules are observed in such a case, no court of appeals judge can serve as acting chief judge of the circuit, and the judicial council will be without appellate members. Where the complaint is against all circuit and district judges, under normal rules no member of the judicial council can perform the duties assigned to the council under the statute.

A similar problem is created by successive complaints arising out of the same underlying grievance. For example, a complainant files a complaint against a district judge based on alleged misconduct, and the complaint is dismissed by the chief judge under the statute. The complainant may then file a complaint against the chief judge for dismissing the first complaint, and when that complaint is dismissed by the next senior judge, still a third complaint may be filed. The threat is that the complainant will bump down the seniority ladder until, once again, there is no member of the court of appeals who can serve as acting chief judge for the purpose of the next complaint. Similarly, complaints involving the merits of litigation may involve a series of decisions in which many judges participated or in which a rehearing en banc was denied by the court of appeals, and the complaint may name a majority of the judicial council as subject judges.

In recognition that these multiple-judge complaints are virtually always meritless, the judicial council is given discretion to determine: (1) whether it is necessary, appropriate, and in the interest of sound judicial administration to permit the chief judge to dispose of a complaint where it would otherwise be impossible for any active circuit judge in the circuit to act, and (2) whether it is necessary, appropriate, and in the interest of sound judicial administration, after appropriate findings as to need and justification are made, to permit subject judges of the judicial council to participate in the disposition of a petition for review where it would otherwise be impossible to obtain a quorum.



Applying a rule of necessity in these situations is consistent with the appearance of justice. See, e.g., *In re Complaint of Doe*, 2 F.3d 308 (8th Cir. Jud. Council 1993) (invoking the rule of necessity); *In re Complaint of Judicial Misconduct*, No. 91-80464 (9th Cir. Jud. Council 1992) (same). There is no unfairness in permitting the chief judge to dispose of a patently insubstantial complaint that names all active circuit judges in the circuit.

Similarly, there is no unfairness in permitting subject judges, in these circumstances, to participate in the review of a chief judge's dismissal of an insubstantial complaint. The remaining option is to assign the matter to another body. Among other alternatives, the council may request a transfer of the petition under Rule 26. Given the administrative inconvenience and delay involved in these alternatives, it is desirable to request a transfer only if the judicial council determines that the petition is substantial enough to warrant such action.

In the unlikely event that a quorum of the judicial council cannot be obtained to consider the report of a special committee, it would normally be necessary to request a transfer under Rule 26.

Rule 25(h) recognizes that the jurisdictional statement of the Judicial Conference Committee contemplates consultation between members of the Committee and judicial participants in proceedings under the Act and these Rules. Such consultation should not automatically preclude participation by a member in that proceeding.

#### 10th Cir. Rule 25

No local rule.

### **Rule 26.**

#### **Transfer to Another Judicial Council.**

In exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit. The request for a transfer may be made at any stage of the proceeding before a reference to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2) or a petition for review is filed under Rule 22. Upon receiving such a request, the Chief Justice may refuse the request or select the transferee judicial council, which may then exercise the powers of a judicial council under these Rules.

**Commentary on Rule 26** — Rule 26 is new; it implements the *Breyer* Committee's recommended use of transfers. *Breyer* Committee Report, 239 F.R.D. at 214-15.

Rule 26 authorizes the transfer of a complaint proceeding to another judicial council selected by the Chief Justice. Such transfers may be appropriate, for example, in the case of a serious complaint where there are multiple disqualifications among the original council, where the issues are highly visible and a local disposition may weaken public confidence in the process, where internal tensions arising in the council as a result of the complaint render disposition by a less involved council appropriate, or where a complaint calls into question policies or governance of the home court of appeals. The power to effect a transfer is lodged in the Chief Justice to avoid disputes in a council over where to transfer a sensitive matter and to ensure that the transferee council accepts the matter.

Upon receipt of a transferred proceeding, the transferee council shall determine the proper stage at which to begin consideration of the complaint — for example, reference to the transferee chief judge, appointment of a special committee, etc.

#### 10th Cir. Rule 26

No local rule.

**Rule 27.****Withdrawal of Complaints and Petitions for Review.**

(a) *Complaint Pending Before Chief Judge.* With the chief judge's consent, a complainant may withdraw a complaint that is before the chief judge for a decision under Rule 11. The withdrawal of a complaint will not prevent a chief judge from identifying or having to identify a complaint under Rule 5 based on the withdrawn complaint.

(b) *Complaint Pending before Special Committee or Judicial Council.* After a complaint has been referred to a special committee for investigation and before the committee files its report, the complainant may withdraw the complaint only with the consent of both the subject judge and either the special committee or the judicial council.

(c) *Petition for Review.* A petition for review addressed to a judicial council under Rule 18, or the Judicial Conference Committee on Judicial Conduct and Disability under Rule 22 may be withdrawn if no action on the petition has been taken.

**Commentary on Rule 27** — Rule 27 is adapted from the Illustrative Rules and treats the complaint proceeding, once begun, as a matter of public business rather than as the property of the complainant. Accordingly, the chief judge or the judicial council remains responsible for addressing any complaint under the Act, even a complaint that has been formally withdrawn by the complainant.

Under subsection 27(a), a complaint pending before the chief judge may be withdrawn if the chief judge consents. Where the complaint clearly lacked merit, the chief judge may accordingly be saved the burden of preparing a formal order and supporting memorandum. However, the chief judge may, or be obligated under Rule 5, to identify a complaint based on allegations in a withdrawn complaint.

If the chief judge appoints a special committee, Rule 27(b) provides that the complaint may be withdrawn only with the consent of both the body before which it is pending (the special committee or the judicial council) and the subject judge. Once a complaint has reached the stage of appointment of a special committee, a resolution of the issues may be necessary to preserve public confidence. Moreover, the subject judge is given the right to insist that the matter be resolved on the merits, thereby eliminating any ambiguity that might remain if the proceeding were terminated by withdrawal of the complaint.

With regard to all petitions for review, Rule 27(c) grants the petitioner unrestricted authority to withdraw the petition. It is thought that the public's interest in the proceeding is adequately protected, because there will necessarily have been a decision by the chief judge and often by the judicial council as well in such a case.

**10th Cir. Rule 27**

No local rule.

**Rule 28.****Availability of Rules and Forms.**

These Rules and copies of the complaint form as provided in Rule 6(a) must be available without charge in the office of the clerk of each court of appeals, district court, bankruptcy court, or other federal court whose judges are subject to the Act. Each court must also make these Rules and the complaint form available on the court's website, or provide an Internet link to the Rules and complaint form that are available on the appropriate court of appeals' website.

**10th Cir. Rule 28**

No local rule.

**Rule 29.**  
**Effective Date.**

These Rules will become effective 30 days after promulgation by the Judicial Conference of the United States.



# COMPLAINT FORM

## JUDICIAL COUNCIL OF THE TENTH CIRCUIT

### COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 5 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The rules are available in federal court clerks' offices, on individual federal courts' websites, and on [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

Your complaint (this form and the statement of facts) should be typewritten and must be legible. Pursuant to Tenth Circuit Misconduct Rule 6.3, only one original need be filed. Enclose the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant:

Contact Address:

Daytime telephone: ( )

2. Name(s) of Judge(s):

Court:

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

☐ Yes

☐ No

If "yes," give the following information about each lawsuit:

Court:

Case number:

Docket number of any appeal to the Circuit: \_\_\_\_\_

Are (were) you a party or lawyer in the lawsuit?

☐ Party

☐ Lawyer

☐ Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

4. Have you filed any lawsuits against the judge?

☐ Yes

☐ No

If "yes," give the following information about each such lawsuit:

Court:

Case number:

Present status of lawsuit:

Name, address, and telephone number of your lawyer for the lawsuit against the judge:

Court to which any appeal has been taken in the lawsuit against the judge:

Docket number of the appeal:

Present status of the appeal:

5. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation. *See Tenth Circuit Misconduct Rule 6.1*; such statement should be limited to five (5) pages.

6. **Declaration and signature:**

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

---

(Signature)

(Date)

**UNITED STATES  
BANKRUPTCY APPELLATE  
PANEL  
OF THE TENTH CIRCUIT  
LOCAL RULES**

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Effective through January 1, 2013



THE  
BIBLICAL  
CRITICISM  
OF THE  
HEBREW  
TEXT

BY  
J. H. WILSON

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# **UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE TENTH CIRCUIT LOCAL RULES**

## **L. R. 8001-1.**

### **Notice of Appeal - Separate Notices Required**

A separate notice of appeal, together with the prescribed fee, is required with respect to each order being appealed. A party may not seek review of multiple orders using a single notice of appeal.

## **L. R. 8001-3.**

### **Election for District Court Determination of Appeal**

An appellant's statement of election to have its appeal heard in the district court under 28 U.S.C. § 158(c)(1)(A) and Fed. R. Bankr. P. 8001(e) must be filed with the bankruptcy court. Any other party electing to have the appeal heard in the district court under 28 U.S.C. § 158(c)(1)(B) must file its statement of election with this court. A cross-appellant seeking to have its appeal and the appellant's appeal heard in the district court must file a separate statement of election in each appeal.

## **L. R. 8001-4.**

### **Entry of Appearance, Statement of Interested Parties, and Statement Regarding Oral Argument, One Document**

Within 14 days after the date of the notice that the appeal has been docketed with this court, counsel for each party, or a pro se party, must file the following with this court:

(a) **Entry of Appearance.** The Entry of Appearance ("Appearance") must contain the filer's name, address, telephone and facsimile numbers, and ECF e-mail address. Attorneys whose names subsequently appear on filed papers must also file an Appearance.

(1) **Deemed Appearance.** While the court requires an Appearance from all attorneys in the appeal, attorneys who authorize their names to appear on filed papers are deemed to have entered an Appearance.

(2) **Withdrawal.** An attorney who has entered an Appearance may not withdraw without leave of court.

(b) **Statement of Interested Parties.** All parties, other than governmental parties, must file a Statement of Interested Parties ("Statement") disclosing by name any interested party who is not listed in the notice of appeal. If there is none, a statement to that effect must be filed.

(1) **Interested Party.** The term "interested party" includes all persons, associations, firms, partnerships, corporations, guarantors, insurers, affiliates, or other legal entities that are financially interested in the outcome of the appeal.

(2) **Corporations.** When a corporation is a party to an appeal, the Statement must identify any parent corporation and any publicly held corporation that owns, directly or indirectly, 10% or more of the equity interest in the corporation. If there are none, a statement to that effect must be filed.

(3) **Prior Attorneys.** The Statement must include the names of attorneys who have previously appeared for a party in the case or proceeding below but who have not entered an appearance in this court.

(4) **Obligation to Amend.** A party who learns that an otherwise undisclosed party is an interested party must immediately file an amended Statement.

(c) **Statement Regarding Oral Argument.** The Statement Regarding Oral Argument must indicate whether the party is requesting oral argument. A party may amend its request no later than the filing of its initial brief.

(d) **One Document.** The Entry of Appearance, Statement of Interested Parties, and Statement Regarding Oral Argument may be combined into one document.

#### **L. R. 8001-5.**

#### **Payment of Fees to Bankruptcy Court**

Fees prescribed by the Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930 must be paid to the bankruptcy court.

#### **L. R. 8001-6.**

#### **Proceedings In Forma Pauperis, Fee Waiver**

A motion to proceed in forma pauperis or to waive the fee must be filed with the bankruptcy court.

#### **L. R. 8003-1.**

#### **Motion for Leave to Appeal - Transmittal of Motion and Notice of Appeal**

Immediately after a motion for leave to appeal and notice of appeal are filed, the bankruptcy court clerk must notify the bankruptcy appellate panel clerk of the filing. Any answer to a motion for leave to appeal must be filed with this court.

#### **L. R. 8005-1.**

#### **Stay Pending Appeal**

(a) **Motion.** A motion for stay pending appeal under Fed. R. Bankr. P. 8005 must state whether the motion was first presented to the bankruptcy court; if not, the motion must explain why it was not so presented.

(b) **Appendix.** The motion must be accompanied by an appendix containing the following:

- (1) a copy of the bankruptcy court's order denying a motion for stay or a copy of the transcript of the bankruptcy court's hearing on the motion, unless the motion was not first presented to the bankruptcy court; and
- (2) a copy of any document filed in the bankruptcy court that is needed to decide the motion.

(c) **Emergency Motion.** If the motion is an emergency motion, the moving party must also comply with Fed. R. Bankr. P. 8011(d) and 10th Cir. BAP L. R. 8011-1 and 8011-4.

#### **L. R. 8006-1.**

#### **Designation of Record - Appeal**

Once a party has designated the record on appeal in accordance with Fed. R. Bankr. P. 8006, the party should not provide copies of the designated items to the bankruptcy court. The record must be brought before this court by the parties in the appendices as required by Fed. R. Bankr. P. 8009(b) and 10th Cir. BAP L. R. 8009-2 and 8009-3.

#### **L. R. 8007-2.**

#### **Transmission of Record - Appeal**

(a) **Notification of Notice of Appeal.** Immediately after a notice of appeal is filed, the bankruptcy court clerk must notify the bankruptcy appellate panel clerk of the filing of the notice of appeal.

(b) **Supplemental Notification of Motions and Statements.** After the notice of appeal has been filed and notification made:

- (1) if any motion regarding the appealed judgment or order is filed, the bankruptcy court clerk must immediately notify the bankruptcy appellate panel clerk of the filing of the motion and any order disposing of the motion; and
  - (2) if any statement of election to have the appeal heard in the district court is filed, the bankruptcy court clerk must immediately notify the bankruptcy appellate panel clerk of the filing of the statement of election.
- (c) **Transmission of the Record.** Compliance with this rule constitutes transmission of the record on appeal under Fed. R. Bankr. P. 8007(b).

#### **L. R. 8008-1. Filing and Service**

(a) **Mandatory Electronic Case Filing System.** This court has adopted a mandatory electronic case filing system ("ECF"), effective May 1, 2010. Persons subject to mandatory ECF shall be known as e-filers.

(b) **ECF Procedures and Guidance, System Requirements.** ECF procedures and guidance, and system requirements are posted on the Tenth Circuit Bankruptcy Appellate Panel website.

(c) **Non-Electronic Filing and Service.** Persons exempt from mandatory ECF must file and serve documents in accordance with Fed. R. Bankr. P. 8008. Persons subject to mandatory ECF must serve persons exempt from mandatory ECF in accordance with Fed. R. Bankr. P. 8008.

(d) **"Mail" Defined.** As used in Fed. R. Bankr. P. 8008, the term "mail" includes:

- (1) first-class mail;
- (2) any other class of mail that is at least as expeditious as first-class mail; or
- (3) dispatch to a third-party commercial carrier for delivery within 3 calendar days.

(e) **E-mail and Facsimile Filings.** Any person exempt from mandatory ECF may file a document by e-mail or facsimile. A document filed by e-mail or facsimile is considered filed on the date that it is received by this court, except that a document received on a Saturday, Sunday, legal holiday or day that the court is closed, is considered filed as of the next business day.

(f) **Format.** Any document filed by paper must be reproduced on 8 1/2" x 11", white, opaque, unglazed paper, with printing on only one side of the page. Any document filed by e-mail, facsimile, or through ECF must also be formatted on 8 1/2" x 11" pages.

(g) **Original Signature Required.** All filings by a party exempt from ECF will contain an original signature on the filing and its Certificate of Service.

#### **L. R. 8008-5. Privacy Protection**

An appeal in a case or proceeding in which privacy protection was governed by Fed. R. Bankr. P. 9037 is governed by the same rule on appeal. In all other appeals, privacy protection is governed by Fed. R. Civ. P. 5.2. The bankruptcy appellate panel clerk will NOT redact personally identifiable information that the filer neglects to redact.

#### **L. R. 8009-1. Time for Filing Briefs - Appeal**

The appellant's brief must be filed within 45 days after the date of the notice that the appeal has been docketed with this court.

#### **L. R. 8009-2. Time for Filing Appendix to Brief - Appeal**

The appellant's appendix must be filed within 45 days after the date of the notice that the appeal has been docketed with this court.



**L. R. 8009-3.**  
**Form of Appendix - Appeal**

In accordance with 10th Cir. BAP L. R. 8006-1, the appendix constitutes the record on appeal and must contain all excerpts from the record relevant to the appeal.

(a) **Form.** An appendix must be separate from a brief.

(b) **Cover.** An appendix must have a cover page containing the following:

(1) the case caption;

(2) the title "Appendix," with the name of the filing party; and

(3) counsel or a pro se party's name, address, telephone and facsimile numbers, and ECF e-mail address.

(c) **Table of Contents.** An appendix must include a table of contents which gives the full name of each document contained in the appendix, the bankruptcy docket number, and the page number in the appendix on which it begins.

(d) **Pagination.** Each page in the appendix must have its own page number in sequential order.

(e) **Order of Documents.** A copy of the bankruptcy court docket sheet, which includes the entry of the notice of appeal, must be the first document in the appendix. Copies of documents filed with the bankruptcy court should be arranged in chronological order according to the filed date, with any exhibit or transcript included as of the date of the hearing.

(f) **Transcripts.** The appendix must contain all transcripts necessary for this court's review. Transcripts submitted to this court must be prepared in accordance with Fed. R. Bankr. P. 5007(a) and Fed. R. Bankr. P. 8007(a).

(g) **Exhibits.** The appendix must contain all exhibits filed in the bankruptcy court necessary for this court's review.

(h) **Documents Considered.** Only documents properly before the bankruptcy court may be included in the appendix and considered by this court.

(i) **Multiple Parties.** If multiple parties file separate briefs, they may file separate appendices; however, parties should not duplicate items included in a previously-filed appendix and may adopt the items by reference.

(j) **Exemptions.** If documents to be included in an appendix are not susceptible of copying, or are so voluminous that copying is excessively burdensome or costly, a party should file a motion to exempt the documents from the appendix and file them separately.

(k) **Sealed Documents.** Copies of documents filed under seal with the bankruptcy court should be filed IN PAPER in an addendum separate from the appendix, accompanied by a motion to place the addendum under seal with this court.

**L. R. 8010-1.**  
**Form of Briefs - Appeal**

(a) **Cover.** A cover must contain the following:

(1) the case caption;

(2) the title "Brief," with the name of the filing party; and

(3) counsel or a pro se party's name, address, telephone and facsimile numbers, and ECF e-mail address.

(b) **Text.** Word processor or typewriter text must be no smaller than a 12-point font and, except for indented quoted material and footnotes, must be double-spaced. Each page must have 1" margins on all sides, with no text other than page numbers appearing within the margins.

(c) **References to Appendix.** References to documents in an appendix must be to pages of the appendix (e.g., Appellant App. at 27, or Appellee Supp. App. at 14).

(d) **Statement of Related Cases.** A party who knows of a related case pending before the United States Supreme Court or any United States Court of Appeals, District Court, or Bankruptcy Appellate Panel must include as the last page of its brief a statement listing the

related case(s). A related case is one that involves substantially the same litigants and substantially the same fact pattern or legal issues as the pending appeal.

**(e) Length of Brief.** The Statement of Related Cases is excluded from the page limits in Fed. R. Bankr. P. 8010(c).

**(f) Length of Amicus Brief.** An amicus brief must not exceed 20 pages without leave of court.

#### **L. R. 8011-1.**

#### **Motion, Response, Reply - Appeal**

**(a) Statement Regarding Opposition.** A motion, other than a procedural motion or a motion for stay, must state whether any party to the appeal opposes the relief sought.

**(b) Reply.** If a response to a motion is filed, the movant may file a reply to the response within 7 days after service of the response. The court will not consider any further response or reply without leave of court.

**(c) Statement of Interested Parties Required.** If a party filing a motion or responding to a motion has not yet filed its Statement of Interested Parties as required by L. R. 8001-4(b), the motion or response must be accompanied by a Statement of Interested Parties.

#### **L. R. 8011-4.**

#### **Emergency Motion - Appeal**

**(a) Notice.** Before filing an emergency motion, the movant must call the bankruptcy appellate panel clerk in order to give as much advance notice as possible. Emergency motions, appendices, and responses must be filed and served by the quickest method available.

**(b) Appendix.** An appendix must be served and filed with the motion and must include a copy of the following:

- (1) the notice of appeal;
- (2) the judgment, order, or decree from which the appeal is taken; and
- (3) any other document filed with the bankruptcy court that is needed to decide the motion.

#### **L. R. 8012-1.**

#### **Oral Argument - Appeal**

**(a) Telephone or Video Conference.** A party may request, or the court may determine, that oral argument be conducted telephonically or by video conference.

**(b) Change of Date, Method, or Place of Hearings.** Before filing a request to change the date, method, or place of a hearing, a party must give the bankruptcy appellate panel clerk as much advance notice as possible. After the date of the notice of oral argument, the date, method, or place assigned for hearing will not be changed without leave of court.

**(c) Failure to File Brief.** An appellee who has not filed a brief may not participate in oral argument without leave of court.

**(d) Notification of Appearance.** Within 14 days after the date of the notice of oral argument, each party who has filed a brief must file a statement indicating who will appear at oral argument on behalf of the party. Any party who fails to file the required statement may not participate in oral argument without leave of court.

#### **L. R. 8014-1.**

#### **Costs - Appeal**

A bill of costs must be filed with the bankruptcy court.

**L. R. 8015-1.**  
**Motion for Rehearing - Appeal**

(a) **Rehearing Not Routine.** A motion for rehearing should not be filed routinely. Rehearing will be granted only if a significant issue has been overlooked or misconstrued by the court.

(b) **Content.** The motion must state with particularity each point of law or fact that the moving party believes the court has overlooked or misapprehended and must argue in support of the motion.

(c) **Number of Motions.** This court will consider only one motion for rehearing from each party to the appeal.

**L. R. 8016-4.**  
**Bankruptcy Appellate Panel Clerk Authorized to Act on Certain Matters**

Subject to review by the court, the bankruptcy appellate panel clerk may act on any of the following:

(a) **Motions.**

(1) To extend time to file a document or perform an act required by these rules or Fed. R. Bankr. P. 8006, 8007, 8009, 8011, or 8014;

(2) To supplement or correct a document filed with this court;

(3) To consolidate appeals;

(4) To substitute parties;

(5) To appear as amicus curiae;

(6) To expedite or continue cases;

(7) To substitute counsel, or to allow counsel who has entered an appearance to withdraw;

(8) To voluntarily dismiss an appeal;

(9) To exempt documents from an appendix under 10th Cir. BAP L. R. 8009-3(j);

(10) To place documents under seal under 10th Cir. BAP L. R. 8009-3(k);

(11) Any other motion the court may authorize.

(b) **Other Matters.**

(1) To deny an election to have an appeal heard by a district court which is not in compliance with 28 U.S.C. § 158(c)(1); and

(2) To deny motions that do not comply with these rules or the Federal Rules of Bankruptcy Procedure.

**L. R. 8016-5.**  
**Entry of an Order**

An order is entered when it is noted on the docket.

**L. R. 8016-6.**  
**Mandate**

(a) **Issue Date.** This court's mandate must issue immediately after the time to file a motion for rehearing expires, unless the mandate is stayed under subdivision (b) of this rule or the court shortens or enlarges the time.

(b) **Stay of Mandate.** Unless this court orders otherwise, the mandate is stayed until the court resolves the following:

(1) a timely-filed motion for rehearing;

(2) a motion for stay of judgment under Fed. R. Bankr. P. 8017(b) that is filed before the mandate is issued; or

(3) a motion to stay the mandate that is filed before the mandate is issued.

(c) **Issue After Stay.** If this court stays its mandate pending appeal, the mandate must issue immediately after this court files the mandate from the appellate court.



**(d) Mandate.** The mandate consists of a certified copy of this court's order or judgment and a copy of any opinion.

### **L. R. 8018-1.**

#### **Local Rules of Circuit Judicial Council or District Court**

**(a) Application of the Federal Rules of Bankruptcy Procedure.** Unless otherwise altered or suspended by these rules or by court order, Part VIII of the Federal Rules of Bankruptcy Procedure and all relevant Official Forms apply to proceedings in this court.

**(b) Application of the Federal Rules of Appellate Procedure.** In cases in which Part VIII of the Federal Rules of Bankruptcy Procedure and these rules are silent as to a particular manner of practice, the court may order application of the Federal Rules of Appellate Procedure or the Tenth Circuit Rules.

### **L. R. 8018-2.**

#### **Admission to Practice**

**(a) Admission.** An attorney is admitted to practice before this court if the attorney is:

- (1)** admitted to practice by and a member in good standing of the United States Court of Appeals for the Tenth Circuit; or
- (2)** admitted to practice by and a member in good standing of a United States District Court within the Tenth Circuit; or
- (3)** admitted to practice by a United States Bankruptcy Court in the case or proceeding on appeal.

**(b) Student Practice.** A law student may appear before this court after the following conditions are satisfied:

**(1) Qualifications of Student.** The student must:

**(A)** be enrolled and in good standing in a law school accredited by the American Bar Association, or a recent law school graduate awaiting the first bar examination after the student's graduation or the result of that examination;

**(B)** have completed the equivalent of 4 semesters of legal studies; and

**(C)** be familiar with the Federal Rules of Bankruptcy Procedure, the American Bar Association Code of Professional Responsibility, and the rules of this court.

**(2) Consent of Party.** The party must state that it consents to the law student's appearance on its behalf, and the statement must be filed with this court; and

**(3) Supervising Attorney.** An attorney who is admitted to practice before this court must supervise the student. The supervising attorney must:

**(A)** assume personal professional responsibility for the quality of the student's work;

**(B)** guide and assist the student as necessary or appropriate under the circumstances;

**(C)** sign all documents filed with this court;

**(D)** appear with the student in any oral presentations before this court;

**(E)** supplement any written or oral statement made by the student to this court or other parties to the appeal if this court so requests; and

**(F)** file with this court a written certification that the student meets the qualifications of this rule and the attorney has agreed to supervise the student in accordance with this rule.

### **L. R. 8018-3.**

#### **Discipline**

This court may discipline attorneys and parties as provided in the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and may refer a disciplinary matter to the appropriate authority.

**L. R. 8018-4.****Diligent Prosecution of Appeals**

(a) **Reporting Changes.** Counsel or pro se parties must immediately file with this court a statement of any change in name, address, telephone and facsimile numbers, or ECF e-mail address. E-filers must also immediately update their PACER Service Center Appellate ECF Account with any changes.

(b) **Failure to Comply.** Failure to comply with these rules or the Federal Rules of Bankruptcy Procedure may delay consideration or lead to denial of the relief being sought.

(c) **Dismissal for Failure to Prosecute.** When an appellant fails to comply with these rules or the Federal Rules of Bankruptcy Procedure, the bankruptcy appellate panel clerk may, after notice and on order to show cause, enter an order dismissing the appeal.

**L. R. 8018-5.****Courtroom Photography, Television and Radio Broadcasts**

For the purposes of the September 1994 resolution of the Judicial Conference of the United States, which prohibits taking photographs in the courtroom or its environs in connection with any judicial proceedings, the environs of this court's courtrooms include the courtrooms utilized by this court, this court's clerk's office, and any hallways in the immediate vicinity of those courtrooms and office. Using radio, television, or other means for live or delayed broadcasting is forbidden in areas from which photography is excluded.

**L. R. 8018-6.****Citation of this Court's Unpublished Decisions**

This court's unpublished decisions may be cited for their persuasive value, but are not precedential except under the doctrines of law of the case, claim preclusion, and issue preclusion.

**L. R. 8018-7.****Certification of Questions of State Law**

(a) **Certification and Stay.** When state law permits, this court may certify a state law question to that state's highest court in accordance with that court's rules and may stay the case to await the state court's decision.

(b) **Motion.** Certification may be raised on motion of a party or on this court's own motion. A party seeking certification must file a separate motion no later than with its first brief.

**L. R. 8018-8.****Case Involving Constitutional Question**

(a) **Written Notice Required.** Within 14 days after the date of the notice that the appeal has been docketed with this court, a party must file a written notice with this court if the party:

(1) questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity; or

(2) questions the constitutionality of a state statute in a proceeding in which the state's attorney general is not a party in an official capacity.

(b) **Bankruptcy Appellate Panel Clerk Certification.** If a written notice is filed, the bankruptcy appellate panel clerk must certify that fact to the appropriate attorney general.

(c) **Time Period to Appear.** An attorney general may appear in the appeal within 30 days after the date that the bankruptcy appellate panel clerk serves its certification.

**L. R. 8018-9.****Submission of Supplemental Authority**

If pertinent and significant authorities come to a party's attention after the party's brief has been filed, but before this court's issuance of a decision, the party should promptly file

a statement with this court setting forth the citations to such authorities. The statement must not exceed two pages. Any response must be made within 7 days after service of the statement and must not exceed two pages.

**L. R. 8018-10.**  
**Calculation of Time**

**(a) Application of Fed. R. Bankr. P. 9006.** Unless otherwise specified, Fed. R. Bankr. P. 9006(a), (b), (c), (e), and (f) apply to appeals before this court.

**(b) Legal Holiday.** "Legal holiday," as defined in Fed. R. Bankr. P. 9006(a), includes any day appointed as a holiday by the state in which this court's clerk's office is located or the state of the district in which the matter originated.

**L. R. 8018-11.**  
**Citation and Effective Date of These Rules**

**(a) Citation.** These rules may be cited as follows:  
10th Cir. BAP L. R. \_\_\_\_\_.

**(b) Effective Date.** These rules are effective May 1, 2010.





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THEY'RE ALL LYING



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